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VOLUME II.

TRANSCRIPT OF RECORD

UNITED STATES
COURT OF APPEALS
FIFTH CIRCUIT.

No. 16,632

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
Appellant,

versus

J. M. BROWN, JR., ET AL.,
Appellees.

Appeal from the United States District Court for the Northern District of Alabama.

(ORIGINAL RECORD RECEIVED APR. 22 '57.)

Re-Direct Examination.

By Mr. Simpson:
Q. Did they say what they were going to do to anybody if they found them in there?

Mr. Pettus:
We object to that.

A No, sir, they just wanted—

Mr. Pettus:
We object to that.

The Court:
Overruled.

Mr. Simpson:
May Mr. Chapman be excused?

The Court:
Unless there is objection you may be excused.

Mr. Pettus:
We will excuse him.

(Witness excused.)

Mr. Simpson:
Tell Mr. Dougherty to come in.

ED DOUGHERTY, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:

Q. Mr. Dougherty, state your name to the jury, please, sir.

A. Ed Dougherty, Edward, but everybody calls me Ed.

Q. Where do you live?

A. 6715 First Avenue South.

Q. How long have you lived in Birmingham?

A. All my life.

Q. Who do you work for?

A. L&N.

Q. How long have you worked for the L&N?

A. It's going on 36 years.

Q. What do you do?

A. Hostler helped until the job was cut out; labor now.

Q. You are still with the L&N?

A. Yes, sir, still with them.

Q. All right now, do you belong to one of the Railroad Brotherhoods?

A. Yes, sir.

Q. Which one?

A. Firemen.

Q. Brotherhood of Locomotive Firemen and Enginemen?

A. Yes, sir.

Q. Do you remember when the walkout occurred about the outside hostler helpers being cut off?

A. Yes, sir, I remember it.

Q. About, Sunday, some time in October?
A. October 23.
Q. 23rd of last October?
A. Yes, sir.
Q. Where were you on that Sunday night when that occurred?
A. Mr. McClendon and myself had been to the Yard to get an engine that didn't work on Sunday and bring it to the roundhouse.
Q. To bring it up to the roundhouse?
A. Yes, sir.
Q. When were you due to go back on duty?
A. Next day at 3:00 o'clock.
Q. You were on the second shift?
A. Second shift.
Q. Now then were you there around 9:00 o'clock that night?
A. No, sir.
Q. When the men went out?
A. We was in the Yard.
Q. You were inside of the Yard?
A. Down in the Yard.
Q. Down in the Yard?
A. South Train Yard.
Q. Did you come out of the Yard that night?
A. Yes, sir.
Q. What gate did you come out of?
A. I come out there by the, right back of the shack there, washroom, a little bridge across there.
Q. That is near the roundhouse?
A. Right below it, yes, sir.
Q. Right below the roundhouse?
A. Yes, sir.
Q. Who came out with you?
A. Well, there was two or three behind me, but I don't remember who they was.

Q. Now what time did you come out?

A. Something after 9:00 o'clock. It was 9:00 when we got down there. They was coming out when we got back to the washroom.

Q. When you got back to the washroom?

A. Yes, sir.

Q. Who did you see around there that Sunday night?

A. I didn't see anybody.

Q. You mean you don't remember who you saw?

A. No, sir.

Q. Now then did you have any conversation with one of these Defendants here, Mr. A. R. Thomas there?

A. Not that night, no, sir.

Q. I mean on Monday following, did you have a conversation with him out there?

A. Yes, sir.

Q. About what time was it that you had this conversation with Mr. Thomas?

A. About 8:30 that morning.

Q. On Monday morning?

A. On Monday morning.

Q. Where were you all when you were talking?

A. Right across from where the bus stops there in front of Rex's Barbecue.

Q. How long had you known Mr. A. R. Thomas?

A. Well, I have known him for years.

Q. That is the same as Reese Thomas, he is usually called, isn't it?

A. Yes, sir.

Q. What did he ask you?

A. Sir?

Q. What did he ask you to do, if anything?

A. He didn't ask me to do anything, only to—he had a paper, one of these Post-Heralds, and he said if anybody started in to let them read the paper.

Q. Where did he tell you to take up your post?

A. He didn't assign me to any post.

Q. Did you relieve anybody?

A. Him and Mr. McCutcheon was standing there talking.

Q. He and Mr. McCutcheon was standing at the entrance?

A. Yes, sir.

Q. What entrance was that?

A. Lower one.

Q. That is the little foot bridge?

A. Yes, sir.

Q. He and Mr. McCutcheon were standing at the foot bridge?

A. Yes, sir.

Q. Where you enter into the Yard?

A. On the side of the road, they wasn't exactly at it. You see that bus stops there and they were this way from the little bridge.

Q. About how far from the end of the little bridge?

A. Well, I would say about 15 or 20 feet, I guess.

Q. Now, he asked you to take up your place, your position there?

A. He didn't ask me to take anything, I come over there to help out what I could, help do what I could.

Q. You came over there as a fireman?

A. I volunteered mine.

Q. What?

A. I was a volunteer, nobody didn't ask me.

Q. You volunteered?

A. Yes, sir.

Q. Who did you relieve there on that job?

A. Him and Mr. McCutcheon was there together, and they left.

Q. They left when you took up the place?

A. Yes, sir.

Q. When you volunteered to take up that place?

A. Yes, sir.

Q. How long did you stay there?

A. I hung around there all day.

Q. Did Mr. Thomas tell you how long he wanted you to stay there?

A. No, sir, he didn't say.

Q. You stayed there during the day?

A. Yes, sir.

Q. When you left there that night did you go home?

A. Yes, sir.

Q. And spend the night?

A. I went straight home.

Q. What time did you get back there the next morning?

A. About 8:30.

Q. What did you do then?

A. I stayed out there around in front of Rex's Barbecue and on each side of the road, some over here, some over there, talked to the boys.

Q. You stayed around the entrance to the plant?

A. Yes, sir.

Q. To the powerhouse?

A. Yes, sir.

Q. Who did you find there when you got there that morning, standing there at the end of that walkway?

A. I don't remember anybody standing there.

Q. Do you remember Mr. Marler?

A. Yes, that's right.

Q. That's right. Now, you know Mr. Marler?

A. Yes, sir.

Q. He is a fireman, is that right?
A. Yes, sir.
Q. You found him standing there that morning when you got there?
A. Yes, sir.
Q. You took his place and he left?
A. Yes, sir.
Q. So if Mr. Marler was a picket there at the end of that walk you took his place there as a picket about 6:30 that morning, didn't you?
A. About 8:30.
Q. About 8:30?
A. Yes, sir.
Q. Was it that late?
A. Yes, sir.
Q. You stayed there all day?
A. Yes, sir, about all day.
Q. Now then, did you see Mr. McClendon around there that day?
A. Yes, sir.
Q. Did you see Mr. McCutcheon around there?
A. Yes, sir.
Q. Did you see anybody else that you can remember now?
A. I saw several of them around there.
Q. You saw Mr. Thomas there, didn't you?
A. Mr. Thomas?
Q. Reese Thomas.
A. Mr. Brown.
Q. J. M. Brown, Jr.?
A. Yes, sir.
Q. The Defendant here?
A. Yes, sir.
Q. Anybody else?
A. Mr. Anderson.

Q. Mr. Howard Anderson?

A. Yes, sir.

Q. And did you see anybody that—you know what whittling means, don't you, around these entrances to the Company's property?

A. Well, there was some of them was, I guess. I didn't have nothing to whittle on.

Q. You didn't whittle any?

A. No, sir, I didn't have nothing to whittle with.

Q. Now, when they get out their knives and go to whittling around these entrances—you know what I mean?

A. Yes, sir.

Q. You had seen that in other strikes there?

A. Yes, sir.

Q. Did you see some whittling going on around the entrance to the property there on this occasion?

A. I don't remember any whittling going on while I was over there.

Q. You didn't remember any whittling going on?

A. No, sir.

Q. You didn't see any whittling going on there on Tuesday when you relieved Mr. Marler there?

A. Well, Mr. Marler had a little piece of kindling up there I think.

Q. He had a little kindling?

A. Yes, sir.

Q. Was he working on the kindling with an open knife?

A. Yes, sir.

Q. And he was there to invite any people not to go in just like you were, wasn't he?

A. I imagine so.

Mr. Simpson:

You can have the witness.

The Court:
Are there any questions?

Mr. Pettus:
Just a moment, Your Honor.

Mr. Simpson:
One more question while he is waiting.

Q. While you were on duty there, after you relieved Mr. Marler, didn't some engineers come up there and say they wanted to go in and go to work?
A. No, sir, not while I was there. The engineers and everybody else was around over in front there, but no one didn't say they wanted to go in and go to work.
Q. The first day you got out there didn't some engineers come up there and ask you about letting them go in there and go to work?
A. Not that I remember.
Q. You can't remember that?
A. No, sir.
Q. All right.
A. If they had asked me I would have told them to went ahead.
Q. You would?
A. Yes, sir.
Q. You were not doing any whittling?
A. No, sir.

Mr. Simpson:
All right, that's all.

Mr. Pettus:
We will excuse Mr. Dougherty.

The Court:
All right, come down.

(Witness excused.)

Mr. Simpson:
Call Mr. Sexton. May Mr. Dougherty be excused from further attendance on the Court?

The Court:
Yes, sir. You are excused from further attendance, Mr. Dougherty.

E. L. SEXTON, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:
Q. Mr. Sexton, will you state your name to the jury, please, sir?
A. My name is E. L. Sexton.

Mr. Pettus:
I can't hear you.

The Witness:
E. L. Sexton.

Q. Where do you live?
A. I live at 4624 Avenue U, Birmingham 8, Alabama. That is out in the western part of Birmingham.
Q. That is Central Park, isn't it?

A. That is Central Park.

Q. How long have you lived in Birmingham?

A. Practically all my life, except about maybe say 8 years.

Q. Who do you work for?

A. L&N Railroad.

Q. How long have you worked for the L&N?

Mr. Pettus:

We can't hear him over here, may it please the Court.

Q. Pull your chair forward so these gentlemen can hear you.

A. I went to work September 20, I believe it was 1945.

Q. 1945?

A. Yes, sir, 11 years you might say.

Q. Yes. What sort of work do you do?

A. I am a fireman.

Q. A fireman?

A. Yes, sir.

Q. Now then do you recall this strike that occurred in October, 1955, on Sunday the 23rd of October?

A. Yes, sir.

Q. What was the first you heard about that strike?

A. What was the first that I heard?

Q. What was the first word you heard indicating the strike was coming?

A. I heard it rumored around for say four or five nights.

Q. Yes, sir.

A. That there was going to be a strike on a Monday.

Q. On Monday?

A. Yes, I believe that would be about the 24th.

Q. That's right.

A. Yes, sir.

Q. All right, did you hear any conversation particularly on Saturday morning before the strike on Sunday?

A. Well, yes, sir.

Q. About preparations for it in any way?

A. Well, yes, sir, there was general discussion back there you might say, among the men there for several nights.

Q. Did you hear any discussion in the bath house on Saturday morning about it?

A. Yes, sir.

Q. Who did you hear discussing it there?

A. A. R. Thomas.

Q. Mr. Reese Thomas?

A. Yes, and J. B. Otts.

Q. And J. B. Otts?

A. And McCutcheon.

Q. And McCutcheon?

A. Yes, sir.

Q. What was said there in the bath house on that Saturday morning about it?

A. They were discussing the plans of getting picket signs.

Q. Getting picket signs?

A. Getting picket signs, yes, sir.

Q. What did they say about it?

A. Well, they was wondering, it being the hour that it was, out there around approximately 2:30 or 3:00 o'clock Saturday morning, wondering whether or not they could get the picket signs in time to use for Monday.

Q. All right.

A. It being Saturday, you know, a lot of offices are closed in the afternoon.

Q. All right. Tell us as nearly as you remember what they said about it.

A. Well, to begin with they was undecided as to where they would get the picket sings. So one of them borrowed the telephone directory—

Mr. Pettus:

We object to "one of them", unless he identifies him.

Mr. Simpson:

They are all three Defendants in this case.

A. One of the group.

The Court:

Is it one of the three you are referring to?

The Witness:

Yes, sir, one of the three.

The Court:

All right, I overrule the objection.

Mr. Pettus:

We except.

A. Yes, sir, went to the Engine Dispatcher's Office and requested and got a telephone directory. And they looked through the yellow pages to get the names of the several sign companies, and telephone numbers, and things like that to call.

Q. All right. Did they discuss what was to be on the signs?

A. Yes, sir.

Q. What was said about that?

A. Mr. McCutcheon asked J. B. Otts what should be on the signs, what would you put on the signs. J. B. Otts taken a piece of paper and wrote out what he thought should be put on the signs. The signs should read "L&N Railroad Unfair to Hostler Helpers."

Q. All right, did anybody take that paper?

A. McCutcheon did.

Q. Mr. McCutcheon took the paper?

A. Yes, sir.

Q. Did they come to any conclusion there about what the sign painter, what sign painter they were going to?

A. No, sir.

Q. You don't know, after they looked through the yellow pages, who they decided to have do that?

A. No, sir.

Q. Did you ever talk to Mr. McCutcheon later on in the strike or after the strike about what happened to the signs?

A. Ask that question again.

Q. Did you ever discuss the signs with him, or hear Mr. McCutcheon say anything later about whether they got the signs or not, and who got them, and so forth?

A. Oh, yes, I asked McCutcheon the following night.

Q. That would be when?

A. We went to work on—now, you see the first discussion came up on an early Saturday morning.

Q. Yes, sir.

A. We went to work, for instance, Friday night at 11:00 o'clock.

Q. Yes, sir.

A. And then I asked him then after we went to work at 11:00 o'clock Saturday night if he got the signs.

Q. Yes, sir.

A. And he said "Yes."

Q. All right.

A. I didn't ask how many nor where they got them or anything about it.

Q. All right. Did he ever later tell you anything further about them, what they did with them?

A. Mr. McCutcheon didn't, no, sir.

Q. Did anybody else, any of the Defendants ever tell you later what happened to the signs?

A. Yes, sir.

Q. Who was that?

A. A. R. Thomas.

Q. Mr. Reese Thomas?

A. Yes, sir.

Q. What did he tell you?

A. He said he destroyed them to keep them from falling into the wrong hands.

Q. Did he say who he considered "wrong hands"?

A. No, sir, he didn't.

Q. He didn't explain that?

A. No, sir.

Q. Now then where were you about 9:00 o'clock Sunday night, at the time that strike went into effect?

A. Well, I was more than likely at home Sunday night.

Q. Did you come down to the Rex's Barbecue that Sunday night?

A. I did. I left home as usual Sunday night going to work, and I arrived at Rex's Barbecue I will say around approximately 10:30, 30 minutes before I was due to go on duty.

Q. About 30 minutes?

A. Yes, sir.

Q. You didn't know they had come out that night?

A. No, sir, I did not.

Q. When you got down there did you see anybody you knew around there?

A. Yes, sir.

Q. Around Rex's?

A. Yes, sir.

Q. Who did you see?

A. Well, I saw a lot of men that I knew. I talked to several. They was some of the men that work out there. I recognized their faces, I couldn't tell you their names, but I do remember certain men that I talked to, and I remember seeing other faces out there.

Q. Tell us those that you can now remember.

A. What ones of the men that I actually talked to?

Q. Yes, sir.

A. Well, I believe I first talked to, in fact I know I talked to McCutcheon.

Q. Mr. McCutcheon, the Defendant here?

A. I also talked to H. K. Parker.

Q. The Defendant here, H. K. Parker?

A. Yes, sir, Shorty Parker.

Q. Yes. Who else do you remember having talked to?

A. Well, as far as just holding a conversation with an individual there, they were about the only two that I held you might say a conversation with. Well, I did hold a conversation with an electrician, Jimmy Zuiderhoek.

Q. Zuiderhoek?

A. Yes, sir, but so far as talking with the other fellows, I was just mingling in the crowds, talking to first one and then another, but I do remember them specifically.

Q. Now, you had a conversation you say with Mr. McCutcheon, the Defendant?

A. Yes, sir.

Q. What was said between you all?

A. Well, when I walked up to McCutcheon he was standing between the road or highway, whatever you want to call it, and the bridge which we travel going from Rex's Barbecue up to this bath house.

Q. Yes, sir.

A. He was standing there alone.

Q Alone?

A. Yes, sir.

Q. At the end of that bridge?

A. Yes, sir, at the time.

Q. You got to talking with him?

A. Yes, sir, at the time.

Q. You got to talking with him?

A. Yes, sir, I had a talk with him.

Q. Now, what was that conversation?

A. Well, the first thing I asked him, I says "McCutcheon, I thought you fellows was going to strike Monday." He said "Well, the boys decided to pull it today."

Q. Decided they would pull it today?

A. Yes, the boys wanted to pull it today.

Q. This was on Sunday night about 10:30 p. m?

A Yes, somewhere around there, maybe 11:00 o'clock.

Q. You were not at the meeting at Shorty Parker's that afternoon about 4:30, were you?

A. I was not, no, sir.

Q. Did Mr. McCuthceon tell you whether or not they decided up there at Shorty Parker's to pull it that night, or did he tell you where they decided that?

A. I wouldn't say that he told me that it was decided there, but that was the plans, to go to Shorty Parker's.

Mr. Pettus:

We object to what the plans were, and move to exclude that.

The Court:

I sustain the objection.

Mr. Pettus:

That voluntary statement.

The Court:

I sustain the objection.

Q. Had you heard any preliminary discussion about the meeting at Shorty Parker's that afternoon?

A. Yes, sir.

Q. Who had you heard discussing that?

A. McCutcheon and A. R. Thomas.

Q McCutcheon and Reese Thomas?

A. Yes, sir.

Q. And you knew that they did have a meeting up there that afternoon?

A. Well, now—

Q. Or you knew that they planned to have one?

A. I knew they planned to have one, yes, sir.

Q. Now then did you go on in when you found Mr. McCutcheon standing there at the end of the little bridge?

A No, sir.

Q. Did you go on in the Yard?

A. No, sir.

Q. Did you turn back?

A. Yes, sir, after I stood there and talked with him

Q. All right. Now you say you had a talk that night also with Reese Thomas?

A. Sunday night?

Q. Yes. Did you?

A. No, sir.

Q You said Shorty Parker, didn't you?

A I talked to Shorty Parker.

Q. What did Shorty Parker and you say?

A. When I walked in the cafe Shorty was sitting on the stool, and Shorty asked me, says "Well, Sexton, what do you think about the situation?" I said "You want to know what I think about it?" He says "Yes." I said "I think you are a bunch of fools."

Q. What did he say to that?

A. He says "Why do you say that?" I said "Well, it's a wildcat strike, it's not authorized by the Brotherhood, and the Company about tomorrow or within the next day or two if it isn't settled will go down to the Courthouse and get an injunction, and we will be forced to go back to work, and we'll go back to work without any hostler helpers."

Q. What did Mr. Parker say to that?

A. He says "Well, you may be right."

Q. I see. Now then, do you know Mr. Baum here, one of the Defendants?

A. Yes, sir, I know Mr. Baum.

Q. Did Mr. Baum say anything to you that night?

A. Yes, sir

Q Tell us about what time of night that was.

A. Well, I would say it was probably after 11:00 o'clock.

Q. Where were you when Mr. Baum talked to you?

A. Jimmy Zuiderhoek and I were standing off kind of out to ourselves talking about the situation, and Baum walked up to me and says "Sexton", says "I want you to go up to the Master Mechanic's Office and do picket duty tonight." I said "Mr. Baum"—no, I didn't say "Mr. Baum", I said "Well, Baum, what are you going to do?" He said "Well, I haven't had any sleep today, and I am going home and sleep a while, I'll be up there in the morning." I says "Well, for your information, I slept some today, but I am going back home and go to bed tonight now in a little while."

Q. Where was the place that you understood that Baum wanted you to go on duty as a picket?

A. Up at the gate.

Q. What gate?

A. Near the Master Mechanic's Office.

Q. The Master Mechanic's gate?

A. Yes, sir.

Q. That's the one in the middle between the powerhouse and the roundhouse gate, is it, the Master Mechanic's gate?

A. You turn off from I believe Vanderbilt Road about, oh, a block, then you get to the Master Mechanic's Office.

Q. The Master Mechanic's Office?

A. Yes, sir.

Q. That is where he wanted you to go on picket duty that night?

A. That's what he said.

Q. And you declined to do it?

A. Yes, sir.

Q. Did you hear any conversation between Bruce Barnett and Mr. Anderson. Howard Anderson on that Sunday night?

A. I didn't talk with them, but I heard, as they went around through mingling with the men and among the men, that they wanted to get up a gang and go to Oakworth and shut Oakworth down.

Q. Now these gentlemen don't know where Oakworth is?

The Court:

Go where?

The Witness:

Oakworth, in other words, that is the name of the Yard at Decatur, Alabama.

Q. Oakworth is what you call the Decatur Yards?

A. Yes, sir.

Q. Who were these two men?

A. Sir?

Q. Who were the two men that were going to do that?

A. Bruce Barnett and H. E. Anderson.

Q. They were going to get up a gang to go up there?

A. Yes, sir.

Q. When were they going up there?

A. They wanted to leave just as soon as they could get the gang together.

Q. That was on the same Sunday night?

A. Sunday night, yes, sir.

Q. Go up there and close that up?

A. Yes, sir.

Q. Well, do you know whether anybody volunteered to help them do that?

A. No, sir, I wouldn't know.

Q. Was that around Rex's Barbecue place where they were trying to get up that gang?

A. Yes, sir.

Q. Do you know when they actually got the gang up and went to Decatur?

A. No, sir, I do not.

Q. You do not know about that?

A. No, sir.

Q. Did you have any telephone conversation on Tuesday afternoon about what was going on with anybody up at Rex's Barbecue?

A. I had a conversation with someone I would say around Tuesday afternoon.

Q. Did he identify himself over the telephone?

A. Yes, sir.

Q. Who did he say he was?

A. H. D. Dismukes.

Mr. Pettus:

We object to that.

Q. Do you know Mr. Dismukes?

Mr. Pettus:

We object to that telephone identification without recognizing the voice.

The Court:

Well, he would have to identify his voice if he can.

Q. Do you know Mr. Dismukes?

A. Yes, sir.

Q. How long have you known him?

A. About 11 years, ever since I have been working for the L&N.

Q. You talked to a man who said he was Mr. Dismukes?

A. Yes, sir.

Q. In your best judgment was the voice that of Mr. Dismukes?

A. Yes, sir.

Q. That is your best judgment about it?

A. Yes, sir.

Q. Where did you get him on the phone?

A. I called Rex's Barbecue, and I called for J. B. Otts, I asked the lady that answered the phone if J. B. Otts was around.

Q. All right.

A. There was a minute or two elapsed, and she said there wasn't anyone around. So I asked her if there was any firemen around. She said "Wait a minute."

So then the next voice I heard was somebody said "Hello" and I asked who it was, and he identified himself, he said "This is H. D. Dismukes."

Q. Then did you have a conversation with Mr. Dismukes?

A. I asked him what the situation looked like, if it looked like that there was any settlement in sight.

Q. What did he say?

A. He said he didn't really know; he just had come in from Montgomery. He said "I have shut Montgomery down", and he said "I don't know too much about what is going on here."

Mr. Pettus:
We move to exclude that, may it please the Court, not binding on any Defendant in the case; Mr. Dismukes is not a Defendant; hearsay.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. And did you ask him how he had shut Montgomery down?
A. No, sir, I didn't, I don't think I asked him any questions.
Q. You didn't go into details?
A. No, sir.
Q. Now, that was when?
A. Sir?
Q. When did this conversation happen?
A. Tuesday afternoon.
Q. Tuesday afternoon?
A. Yes, sir.
Q. You didn't ask him when or how he shut Montgomery down?
A. No, sir.

The Court:
I am admitting that on the theory that you will connect Dismukes up with the alleged conspiracy that is charged here.

Mr. Simpson:
We will, Your Honor.

The Court:
It is my understanding of the law that a person does not have to be a party to be a co-conspirator.

Mr. Simpson:
You don't have to sue all the conspirators?

The Court:
No, that's right, but you do have to connect the matter up, connect his acts up in some way.

Mr. Simpson:
All right.

Q. Now, Mr. Dismukes was a fireman, was he?
A. He was a fireman, a promoted fireman.

Mr. Pettus:
We can't hear you.

The Witness:
He is a fireman, performing fireman's duties now, but he is a promoted man, which is an engineer.

Q. He has been promoted to engineer?
A. Yes, he has been, yes, sir.
Q. Do you know whether or not Mr. Dismukes at that time was a member of the Firemen?
A. No, sir, I wouldn't know.
Q. You don't know about that?
A. No, sir.
Q. Did you ever have any conversation about picket duty with Mr. Breedlove?
A. Yes, sir.
Q. Do you remember about when that occurred?

A. Now, wait a minute, the conversation that I had with Breedlove was on the telephone.

Q. All right.

A. Not out in the open.

Mr. Pettus:

We object to that.

Q. Did you recognize his voice?

Mr. Pettus:

No recognition of the voice.

Q. Did you recognize Mr. Breedlove over the telephone?

The Court:

Overruled.

Mr. Pettus:

We except.

Q. His voice?

A. Yes, sir.

Q. Did he identify himself as Mr. Breedlove?

A. Yes, sir.

Q. How long have you known Mr. Breedlove?

A. Well, I would say 11 years; ever since I have been working for the L&N Railroad.

Q. In your best judgment was that the voice of Mr. Breedlove?

Mr. Pettus:

I can't hear him, Judge.

The Court:
Speak out, Mr. Sexton.

Q. In your best judgment was the voice that of Mr. Breedlove that you talked to?
A. Yes, sir.
Q. Just tell us what was said between you and Mr. Breedlove on that Wednesday afternoon? I believe it was Wednesday afternoon, wasn't it?
A. No, sir, it was Wednesday morning that I called.
Q. Wednesday morning?
A. Yes, sir.
Q. What was said between you at that time? Now, you are leaning back, and these gentlemen will complain they can't hear you.
A. Well, I called Mr. Breedlove. In other words, Breedlove called for me Monday night and Tuesday night. My telephone I had placed on what you call a vacation plan, due to my mother's illness, and I had the Telephone Company to take another telephone number, which was my mother-in-law's, and refer all emergency calls, or should the call office want to get hold of me. any time my phone number was dialed, the operator would come in and tell them that phone was discontinued, and refer them to this other number.
Q. All right.
A. So Tuesday morning I went down to my mother's house—my mother-in-law's house, and she informed me that a fellow by the name of Breedlove, she had it wrote down on a piece of paper, and the telephone number, said to call him, that it was important. I told her I wasn't going to call him.
So Wednesday morning I went back down there, and she let me know that Mr. Breedlove had called

her again. He had called several times up until 11:00 and 12:00 o'clock that night.

So, to put a stop to that, having him disturbing my wife's mother, I called him Wednesday morning.

Mr. Pettus:

We object to that voluntary statement of this witness.

Mr. Simpson:

I don't insist on that.

Mr. Pettus:

I move to exclude it.

The Court:

I will exclude that, gentlemen.

Q. You did call Mr. Breedlove?

A. I called him Wednesday morning, yes, sir.

Q. All right, now, when you got on the telephone what was the conversation?

A. When he answered his telephone I asked him if this was O. C. Breedlove, and he said "Yep." I said "This is Sexton." He said "E. L.?" I said "Yep", I said "What do you want?" He says "I want you out here on the picket line to let these boys, fellows, know that we are on a strike." I says "I am not on strike.' He says "You are not working, are you?" I says "No, I'm not working." He says "Well, what are you doing?" I said "That's my own personal business as to what I'm doing."

I told him that I had already told J. B. Otts that I wasn't taking orders from him and Baum to do picket duty, or anybody else, and I was letting him know that I wasn't taking orders from him.

Q. All right.

A. That I didn't intend to do any picket duty.

Q. All right.

A. So he informed me that he had the credentials giving him full authority to assign all the pickets, and if I decided to call him, if I changed my mind to call him about the picket duty. So I told him then that I wasn't going to call him, as I was not going on picket duty.

Q. All right. Were you at one time an official of the Firemen's Union?

A. Yes, sir.

Q. How long?

A. For approximately a year and a half to two years. I served as Local Chairman.

Q. You served as Local Chairman?

A. Of the Firemen.

Q. That is the man that handles the grievances, and things of that kind for the Firemen's Union, for a year and a half?

A. Yes, sir.

Q. How long ago was that?

A. I resigned, but I just don't know what year it was. It has been say 3, maybe 4 years.

Q. 3 or 4 years ago?

A. Yes, sir.

Mr. Simpson:

All right, you may have the witness.

Cross Examination.

By Mr. Pettus:

Q. Mr. Sexton, I hand you herewith Defendants' Exhibit 1 and ask you, for identification, and ask you

if you have ever seen that paper before, or one like it?

A. I have seen one like it, yes, sir.

Q. You have seen one like it?

A. Yes, sir.

Q. When did you see it?

A. I will say just a few days before the strike was pulled.

Q. This is dated October 19, 1955. Did you see it about October 19, 1955?

A. I'll say around the 19th or 20th, something like that.

Q. About the 19th or 20th?

A. Yes, sir.

Q. Now, after that notice was put up on the bulletin board—do you work out at the Boyles Yard?

A. Yes, sir.

Q. As soon as that notice was put up you began to hear rumors of a strike, didn't you, or walkout?

A. Yes, sir.

Q. And there was general dissatisfaction with the abolishment of those hostler helpers jobs, wouldn't you say, out there, wasn't there?

A. Yes, sir.

Q. There was a lot of talk about it?

A. Yes, sir.

Q. Did you hear anybody say that—are you a fireman?

A. Yes, sir, I am a fireman, but at that time I was—I am also a hostler, and I was performing hostler duties.

Q. At that time you were performing hostler duties yourself, were you?

A. Yes, sir.

Q. What is your seniority date, Mr. Sexton?

A. I believe it is September 20, 1945.

Q. September 20, 1945?

A. Yes, sir.

Q. All of these men Dougherty, from 1922, Grissom, 1925, and McCutcheon, 1941, out ranked you in seniority, didn't they?

A. Yes, sir.

Q. Did you hear in the general discussion after that notice was put up that if they could abolish the hostler helpers' job they could abolish the firemen's job?

A. No, sir, I don't know that I heard that discussion.

Q. You didn't hear about that?

A. No, sir.

Q. Did you think about that yourself?

A. No, sir, I didn't.

Q. Now, did you ever see any signs yourself during the course of this walkout?

A. I did not see any signs, no, sir.

Q. You didn't see a single sign?

A. I did not.

Q. Are you a member of the Firemen's Organization?

A. Yes, sir, and I have been since 1944 continuously.

Q. Continuously; you joined in '44?

A. I say continuously since 1944.

Q. Continuously since 1944?

A. Yes, sir.

Q. Will you speak up loud? I want everybody to be able to hear you here.

A. Yes, sir.

Q. In this discussion that you say took place at the bath house on the evening of October 24 did you

take part in that discussion, did you make a suggestion or two, with Mr. Thomas and Mr. Otts?

A. You say on the 24th?

Q. On the—when was the discussion?

A. Do you have reference to the night that they were talking about the—

Q. Signs.

A. —signs?

Q. Yes, sir. When was that? When did that take place?

A. That was Saturday morning around, I will say around 2:30 or 3:30 a. m.

Q. A. M.?

A. Yes, sir.

Q. It was in the morning?

A. Yes, sir.

Q. Was there anybody there besides you, Thomas, Otts, and McCutcheon?

A. No, sir.

Q. You all were just in the bath house there together?

A. Yes, sir, that's right, in the bath house.

Q. Did you enter that discussion with them?

A. I stood around with them.

Q. You just stood around with them?

A. Yes, sir.

Q. Did you make any suggestions yourself?

A. No, sir, I did not.

Q. Did you take any part in it?

A. No, sir, I did not.

Q. Did you go in—where was the telephone book that you mentioned?

A. The bath house and the Engine Dispatcher's Office you might say is in the same building, but there is a partition. One corner is partitioned off in the Engine Dispatcher's Office.

Q. Are you certain of the exact time that this took place?

A. Well, it was a good long while after we went to work. We went to work at 11:00 o'clock that night, at 11:00 p. m.

Q. You went to work at 11:00 p. m.?

A. It was actually Friday night.

Q. Actually Friday night?

A. When we went to work, yes, sir.

Q. You were still on that shift, is that correct?

A. Yes, sir.

Q. But you never personally saw any signs?

A. I did not see any signs.

Q. During the entire course of the walkout?

A. I did not.

Q. You were at the Yards, or you did approach the Yards there during the walkout, did you?

A. Sunday night, yes, sir.

Q. On Sunday night?

A. Yes, sir.

Q. You didn't see any signs there then?

A. I did not.

Q. Did you see any Monday?

A. No, sir, because when I left there that Sunday night I did not go back out to Boyles until the night after the strike was settled.

Q. That is on Thursday night?

A. The strike was settled Wednesday night and they failed to get hold of me, and I reported Thursday and went to work Thursday night.

Q. So you were not at the Yard from Sunday night until you returned on Thursday night?

A. That's right.

Q. Did you lay off?

A. No, sir. I didn't lay off.

Q. Did you have a job that was supposed to go on on Wednesday night?

A. After it was settled, yes.

Q. Yes, sir. Did you go on the job Wednesday night?

A. No, sir.

Q. You didn't go on the job until Thursday night?

A. I went on the job Thursday night.

Q. When you went out there that evening, that is on Sunday evening, and talked to Mr. McCutcheon was just the two of you standing out there in the road?

A. You mean Sunday night?

Q. Yes, sir.

A. Yes, sir.

Q. That is on the public road there?

A. Well, we was off of the road, standing between the highway and the bridge, iittle wooden bridge that the Company has put up there for us to walk on.

Q. Were there just the two of you there?

A. Yes, sir.

Q. Was there anybody else there?

A. Not at the time, no, sir.

Q. Who had mentioned the rumors to you of a possible strike? You said that for four or five days before that there was talk of a possible strike or walkout. Just tell us who it was who mentioned that to you?

A. Who mentioned that?

Q. Yes; five days before, you said. Who was the first one that mentioned a possible strike or walkout?

A. It was a general rumor.

Q. It was a general rumor, wasn't it?

A. By all the men, yes, sir.

Q. It was among all the men?

A. Yes, sir.

Q. It was not confined to the firemen, but it was talked among the car men and the switchmen and everybody out there, wasn't it?

A. Well, yes, sir, they all were talking about it.

Q. They were all talking about it?

A. Yes, sir.

Q. Did you go at all downtown to any part of the Company's offices or anything downtown during the course of the strike?

A. No, sir.

Q. When you walked out to talk to McCutcheon did he mention anything to you in regard to going on Company property, or not going on Company property?

A. No, sir.

Q. Do you know Mr. Phillips, a switchman?

A. I may know his face. I don't know him by name.

Q. You were supposed to go on the 11:00 o'clock shift?

A. As a hostler, yes, sir.

Q. Do you know that he just wandered onto the Company property without knowing anything was not running at that time?

A. Mr. Phillips did?

Q. Yes, sir.

A. No, I wouldn't know about that.

Q. Do you know anybody else that just wandered on without knowing anything was going on?

A. No, sir.

The Court:

Gentlemen, we are going to take a recess at this time, 20 minute recess.

(A short recess was had.)

Q. What time did you get down to the Rex's Cafe Sunday night, October 23?

A. Around 10:30.

Q. Were you in your street clothes?

A. No, sir, I was in my work clothes.

Q. In your work clothes?

A. Yes, sir.

Q. How long did you stay there?

A. I stayed around I'll say around until midnight.

Q. You stayed there until around midnight?

A. Somewheres around there.

Q. In other words, you were there about an hour and a half, is that right?

A. Yes, sir.

Q. Where was it you saw Mr. Parker while you were there?

A. Inside of the cafe.

Q. Inside of Rex's Cafe?

A. Yes, sir.

Q. Where was he standing?

A. He was not standing, he was sitting on the stool.

Q. He was sitting on the stool?

A. Yes, sir.

Q. Did you go up and sit on the stool by him?

A. No, sir, I did not.

Q. You just stood there by him?

A. Stood there by the side of him.

Q. As a matter of fact, isn't it true that that is also where you saw McCutcheon, he was inside of the cafe?

A. No, sir, he was not.

Q. As a matter of fact, you did not see him outside of the cafe, did you?

A. I saw him outside of the cafe.

Q. You never did see him inside of the cafe?

A. I don't recall it, no, sir.
Q. You don't recall about that?
A. No, sir.
Q. Now, how about Mr. Baum, where did you see him?
A. Outside of the cafe.
Q. Outside of the cafe too?
A. Yes, sir.
Q. Now, who was with you when you saw Mr. Baum?
A. Who was with me?
Q. Yes.
A. Jimmy Zuiderhoek, an electrician.
Q. The two of you were together?
A. Yes, sir.
Q. Was Mr. Zuiderhoek with you at all times that there was any conversation between you and Baum?
A. Yes, sir.
Q. And there was a conversation between you and Baum?
A. Yes, sir.
Q. You don't like Mr. Baum, do you?
A. I'm not in love with him.
Q. In fact you have got a little grudge against him, haven't you?
A. No, sir, I wouldn't say that, no, sir.
Q. Going back to the day—weren't you Local Chairman of the Firemen at the time?
A. I was, yes, sir.
Q. At that time didn't you have a little disagreement with Mr. Baum?
A. No, sir, he had one with me.
Q. Well, there was a disagreement between you, wasn't there?
A. That's right.

Q. The two of you are not too friendly even to this day, are you?

A. We never have been.

Q. Never have been?

A. Never have been buddies.

Q. In other words, there is no difference, you just feel the same way you always have, you don't like him, is that right?

A. Well, he and I worked on the Southern together, and we didn't even associate on the Southern together.

Q. Then it goes back that far?

A. That's right.

Q. All right. How about Mr. Bruce Barnett and Mr. Howard E. Anderson; where did you see them on that evening?

A. On the outside of the cafe, first one side of the road, and then another.

Q. First one side of the road, and then another?

A. Yes, sir.

Q. You didn't see them inside of the cafe?

A. I don't remember seeing them inside of the cafe, no, sir.

Q. You were not in any position there to hold any conversation with them, were you?

A. I did not hold a conversation with them.

Q. You did not hold a conversation with them?

A. No, sir.

Q. Isn't it a fact that you never saw either one of them that evening outside of an automobile, on the outside of an automobile?

A. Ask me that question again.

Q. Isn't it a fact that you never saw either one of them outside of an automobile?

A. No, sir, that's not a fact.

Q. In other words, you saw them when they were both outside of an automobile?

A. Yes, sir.

Q. When you saw them?

A. Yes, sir

Q. Did you see either one of them in an automobile that evening?

A. No, sir.

Q. You never saw them in an automobile?

A. No, sir.

Q. How long ago was it that you were Local Chairman of the Firemen?

A. I'll say around 3 or 4 years.

Q. 3 or 4 years?

A. I believe it was. I don't know what year, but I'll say 3 or 4 years.

Q. 3 or 4?

A. Yes, sir.

Q. And you resigned as Local Chairman, is that right?

A. I resigned, yes, sir.

Q. You resigned in mid-term?

A. Yes, sir.

Q. Before you served out your term?

A. Sir?

Q. Before you served out your term.

A. Yes, sir, I resigned due to the fact that I was cut off and no longer working out there.

Q. No longer working out there?

A. No, sir.

Q. You hadn't had any more disagreement with any of the other firemen at that time, had you?

A. No, sir.

Q. On this evening, and on the Saturday evening before, where you testified to this conversation that

you overheard between Mr. Thomas and Mr. Otts and Mr. McCutcheon, at that time these men were all firemen, weren't they? That is Mr. Thomas and Mr. McCutcheon and Mr. Otts, they were all members of the Firemen's Organization?

A. I couldn't say that they were, I don't know.

Q. They talked perfectly freely before you?

A. Oh, yes.

Q. Didn't they?

A. Yes, sir.

Q. When you walked up, nobody just sort of eased off, did they?

A. No, sir, they freely talked.

Q. At that time they all talked right before you?

A. That's right.

Q. They didn't hold back anything?

A. That's right.

Q. On the night of Sunday night there when you testified to overhearing some conversation with Bruce Barnett, he was not talking to you, was he?

A. Not directly, he was just in the crowd.

Q. In the crowd?

A. Yes, sir.

Q. You just overheard his conversation?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. How about Howard Anderson?

A. It was the same.

Q. It was the same?

A. Yes, sir.

Q. They were not talking to you?

A. Not directly, no, sir.

Q. But you were in the vicinity?

A. Yes, sir.

Q. How many people were in that vicinity?

A. Well, there was a large crowd. I wouldn't hardly know just hardly how to estimate it. I guess at times there was maybe a hundred men out there, that is including—

Q. Were all of them within earshot of Bruce Barnett and Howard Anderson?

A. No, not all the time.

Q. That's what I am talking about.

A. There is a large area there.

Q. Now, in this conversation that you testified to about Bruce Barnett and Howard Anderson, tell us the name of other men, every man that was standing as close as you were to either one of them at the time they were talking? Just give us their names.

A. I don't know of any particular man that he was talking to, to say he talked to.

Q. You don't know of any particular one?

A. No, sir.

Q. I am just asking you, you say other people were standing around, and I want you to name them?

A. Well, there was a large group of men there.

Q. I want to know.

A. I wouldn't attempt to name all of the men that were out there.

Q. They were mostly L&N employees?

A. Yes, sir.

Q. And there were switchmen and firemen, non-operating employees all out there together, weren't there?

A. Yes, sir.

Q. I am asking you at the time you testified as to this conversation that you overheard of Bruce Barnett, tell us some one else that was there that heard it?

A. Well, I'm not going to vouch for anybody else hearing it.

Q. Tell us somebody that was standing as close to Bruce Barnett as you were when Bruce Barnett was talking.

A. All of the men out there was about as near as I was, there. I am not going to call any names.

Q. You say a hundred men were standing just as close as you were, is that right?

A. I am not going to name any man that heard the conversation.

Q. I am not asking you to name any man that heard the conversation.

A. I'm telling you that.

Q. I am asking you to name one man, just one man—you remember Bruce Barnett was there, don't you?

A. Sure, I know he was there.

Q. All right, now, name one other man that was standing as close to Bruce Barnett as you were.

A. Well, so far as standing near Bruce Barnett is concerned, I didn't say that I was standing near him. They come up to Bruce, men that was there, standing around promiscuously.

Q. How far were you away from Mr. Barnett?

A. I didn't measure it.

Q. I want to know, give us your judgment; you have some judgment about it.

A. Well, they was just mingling in the crowd.

Q. Just mingling in the crowd?

A. Yes.

Q. How close did they get to you when they were mingling?

A. Well, I didn't shake hands with him.

Q. You didn't shake hands with him?

A. No, sir.

Q. You didn't get any closer than 10 feet to either one of them, did you?

A. I probably could have shaken hands with them, but I didn't.

Q. How close did you get to them? That's what I am asking you?

A. I didn't measure it.

Q. Were they talking when you were that close to them?

A. I heard them talking.

Q. You heard them talking?

A. Yes, sir.

Q. Who else was standing as close as you were to them when you heard them talking?

A. Well, I'll tell you, I didn't make no note of what was going on out there that night.

Q. Well, you made notes of their name, didn't you? And you came up and told this FBI man Robey about it, didn't you?

A. I know them, I recognized them.

Q. You recognized other people out there too, didn't you?

A. There was a lot of people out there that I recognized their faces.

Q. Well, call some names besides Barnett and Anderson that you recognized right when they were talking. Can you do it?

A. The whole group of men were out there.

Q. You have told us there were a hundred men. And you have named two of them.

A. I am not going to swear to anybody hearing the conversation. It was rumored around there, everybody was talking.

Q. I am not asking about rumors, I want to get what you heard. And I want the name of some one else that was standing where you were when you heard it.

A. I am not going to swear that anybody heard it. I don't know it to be a fact.

Q. Now, in this conversation that you claim to have had with Breedlove, did you say that you were not taking any orders from Otts and Baum? In your direct examination, was that what you said, from Otts and Baum, or from Breedlove and Baum? Which one was it?

A. I told him I wasn't taking orders from—I told him I had already told Otts that I wasn't taking picket orders from Baum and him; and I also wasn't taking orders from Mr. Breedlove.

Q. You were not taking orders from Breedlove?

A. No, sir.

Q. Now, Mr. Sexton, every firemen that is a Defendant in this case ranks you in seniority on the Railroad, don't they?

A. No, sir.

Q. Not more than one or two or three?

A. There is not all of them, no, sir.

Q. There are about three that don't rank you, and the rest of them rank you, is that right?

A. I believe there is one that is younger on the seniority list than I am.

Q. Have you heard the expression "Seniority hungry"? Do you know what that means?

A. Yes, sir, I know what that means.

Q. Have you heard it applied to yourself?

A. I have.

Q. You have, haven't you?

A. Yes, sir.

Q. Didn't you make the statement in December to a man named Hobson that if there was any way to get Breedlove in this case you were going to do it?

A. No, sir, I don't remember that.

Q. Did you make that statement to anybody?

A. I don't remember it.

Q. You don't remember making it?

A. No, sir.

Q. At that time Breedlove was not in the case, was he?

A. I don't know.

Q. I will ask you if you didn't make the statement last week in the Rex's Cafe while you were eating out there, at the time that Baum was present, that you would like to see all of these men in this case thrown out? That is last week now. Do you recall that?

A. Be thrown out of what?

Q. Thrown out of the Railroad, you know what I mean.

A. No, sir, I didn't make no such remark as that.

Q. You didn't make that remark?

A. No, sir.

Q. Did you call Ben Mitchell Sunday afternoon at 2:00 o'clock, October 23?

A. No, sir, I did not. I have never called Ben Mitchell.

Q. You never have?

A. Never.

Q. Were you the one that called Woelde at 4:00 o'clock?

A. I have never called Woelde.

Q. Never called either one of them?

A. No, sir.

Q. Have you ever made any anonymous telephone calls?

A. No, sir.

Q. To any railroad officials on the L&N?

A. No, sir, I haven't.

Mr. Pettus:

That's all.

Mr. Simpson:

That's all. Thank you, sir.

The Court:

Come down. Do you have any further use for this witness?

Mr. Simpson:

We would like to ask he be excused, Your Honor.

The Court:

Unless there is objection he will be excused.

Mr. Pettus:

We excuse him, Your Honor.

The Court:

You are excused.

(Witness excused.)

Mr. Simpson:

Call Mr. Petty.

We are having to put this witness on out of order because of the same trouble we had yesterday at the Decatur office. There are only two men up there that

can handle the job he is on. We want to get him here today and the other man tomorrow.

The Court:
All right.

R. H. PETTY, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:
Q. Will you state your name to the jury, please, sir?
A. R. H. Petty.

Mr. Pettus:
What are his initials, Mr. Simpson?

Mr. Simpson:
R. H.

Q. Robert Henry Petty, is that right?
A. That's right.
Q. Where do you live?
A. Decatur.
Q. How long have you lived at Decatur?
A. All my life.
Q. Who do you work for?
A. L&N.
Q. You'd better talk out a little louder. I am afraid these gentlemen can't hear you.
A. L&N Railroad.
Q. L&N Railroad?

A. Yes, sir.

Q. And what is your job now, and what was it last October with the L&N Railroad?

A. Chief Clerk in the Freight Office.

Q. At Decatur?

A. Yes, sir.

Q. Do you recall the wildcat strike that occurred last October here at Boyles?

Mr. Pettus:

Your Honor, we object to that terminology.

Mr. Simpson:

Well, that's what your own Brotherhood men call it.

The Court:

I sustain the objection; work stoppage or whatever you want to call it.

Mr. Simpson:

Whatever they want me to call it. I am trying to comply with their own terminology.

Q. What sort of a strike was it? I mean do you recall the strike or work stoppage that occurred last fall?

A. Yes, sir.

Q. In October?

A. Yes, sir.

Q. Do you know what day it started here at Birmingham?

A. No, sir.

Q. At Boyles?

A. No. It was Sunday I understand.

Q. All right. Now, did you see anybody from Birmingham in Decatur on Monday?

A. Yes, sir.

Q. About what time did they get there?

A. About 4:00 o'clock or a little after.

Q. About 4:00 o'clock in the afternoon?

A. Yes, sir, that's right.

Q. Were you on duty at the time?

A. Yes, sir.

Q. And your office is in the front office, is it not?

A. That's right.

Q. That is in downtown Decatur?

A. Yes, sir.

Q. Who else was in the office there at that time, so far as you recall?

A. The whole office force.

Q. About how many of you were there?

A. There were six?

Q. Give us the names of those you remember.

A. Mr. Smith, Mr. Long.

Q. Was Mr. Smith, was he down here yesterday?

A. Yes, sir.

Q. You don't, of course, know whether he testified yesterday before these gentlemen, but Mr. Smith was in your office at that time?

A. Yes, sir.

Q. And Mr. Long?

A. And Mr. Long.

Q. Who else?

A. Mr. Ulrey.

Q. Mr. Ulrey?

A. Yes, sir.

Q. You are going to have to speak out louder, these gentlemen are not going to hear what you say.

A. Mr. Butler.

Q. Mr. Butler?

A. Yes, sir, and Edwards.

Q. Mr. Edwards?

A. Yes, sir.

Q. When these men came in there at 4:00 o'clock, or about 4:00 o'clock, or a little after, on Monday afternoon, how many of them were there?

A. Two or three.

Q. Where did you first see them?

A. Up in the front of the office.

Q. How far was that from your desk?

A. About 20 feet.

Q. When they came in, did they say anything?

A. Yes.

Q. What did they say?

A. They said they had closed up everything in Birmingham, and they had closed up the Yard Office, and had come up to close up the Freight Office.

Q. Had closed up the Yard Office where?

A. At Decatur.

Q. And now they had come over to the Freight Office?

A. That's right.

Q. To close it up?

A. That's right.

Q. Who did they address themselves to? Who did they address that to?

A. Well, everybody in general I imagine.

Q. Was it loud enough for you to hear it?

A. Yes, I heard it.

Q. You heard it?

A. Yes.

Q. Was there anybody in the office further away from them than you were?

A. Yes, sir.

Q. Do you know whether or not it was loud enough to be heard over the whole office?

A. Yes, they all heard it.

Q. They all heard it?

A. Yes.

Q. Did you go on out then?

A. No, sir.

Q. Had you intended to go out on strike?

Mr. Pettus:

We object to what he intended to do.

The Court:

I sustain the objection.

Q. What did you do when you heard that announcement?

A. Well, I told them we would have to put up the money, the Cashier had his money out on his desk, he was balancing his accounts. And I told them we would have to put that in the safe before we could leave.

Q. Did they say anything about what they would do if you didn't go out?

A. Yes, they asked us—told us they wanted us to go out peacefully, if we didn't they would take us out by force.

Q. Now, after they told you that, did you go out immediately or what happened? Just tell the jury what happened.

A. No, we—

Q. Without my having to ask you specific questions.

A. I stayed with the Cashier until he got the money in the safe and locked up, which was about 10 minutes, or 15.

Q. 10 or 15 minutes?

A. Yes, sir.

Q. While he was getting that money locked up, did any further conversation occur?

A. No, they went out, and one of them came back. He thought we were taking too long, and he come back to see about it.

Q. He said you were taking too long?

A. Yes.

Q. And he had come back to see about it?

A. Yes.

Q. What did you tell him?

A. I told him we would go out just as soon as the Cashier got the safe locked up.

Q. Did they come back any more?

A. No, they didn't come back any more.

Q. Did you lock up the money?

A. Yes, sir.

Q. Mr. Smith locked up the money?

A. Yes, sir.

Q. Did you then go out?

A. Yes, sir.

Q. Who was the man doing the most of the talking in there?

A. Well, I didn't know the man at the time, but he was identified to me as Pennington.

Q. Now, had you seen Mr. Pennington before?

A. Yes.

Q. You recognized that you had seen the man before?

A. Yes.

Q. But you did not know his name?

A. I did not know his name.

Q. When had you seen him before?

Mr. Pettus:
We object to that.

The Court:
Overruled.

Mr. Simpson:
I want to identify him.

Q. When had you seen him before?
A. I saw him in April during the other strike.

Mr. Pettus:
We object to that and move to exclude it.

Mr. Simpson:
I've got a right to identify the man.

The Court:
Overruled.

Q. Where did you see him?
A. I saw him at, out in front of the Yard Office, at Decatur.
Q. What were the circumstances under which you observed him at that time?

Mr. Pettus:
We object to that.

The Court:
Now this goes purely to the question of identification?

Mr. Simpson:

We are trying to identify that it was Mr. Pennington that ordered him to come out, yes, sir, if he knows it was Mr. Pennington.

The Court:

Overruled.

Mr. Pettus:

Incompetent, irrelevant, and immaterial. We except.

Q. Go ahead.

A. He accosted me down there at the Yard Office in April.

Q. Go ahead, please, sir, tell us what you saw.

A. And he and the other man, I don't know who the other man was, I have never seen him before or since, they jumped me and hit me, knocked me out.

Q. Unconscious?

A. Yes.

Q. That was in April before this thing happened in October?

A. That's right.

Mr. Pettus:

We move to exclude that.

The Court:

I will exclude it, gentlemen. I have permitted this solely for the purpose of this witness identifying the man.

Mr. Simpson:

That's right.

The Court:

Not for any other extraneous purpose or other purpose but for that purpose only.

Mr. Simpson:

All that we are offering it for, may it please the Court, is purely to show that Mr. Petty recognized Mr. Pennington as the man that was in there in October, because he had seen him on this previous occasion. Does the Court allow that?

The Court:

I am admitting it solely for that purpose.

Mr. Simpson:

That's all we are asking it for.

Q. Now, did you see Mr. Pennington after you got out of the office there at Decatur that afternoon?

A. Yes, sir.

Q. That is after you left the office?

A. He was standing out in front.

Q. And did you have any conversation with him then?

A. Yes.

Q. Now, would you mind telling us what that was?

A. He asked us if we were coming back the next day, and I told him he would have to wait and see, we didn't know.

Q. You didn't know whether you would come back next day or not?

A. No.

Q. Now, what reply did he make to that, if any?

A. He said well, we had better not.

Q. He said well, you had better not?

A. Yes.

Q. Did you hear him make any remark to Mr. Smith about what he would do to him if he showed up there next day?

A. Well, he just—I don't know as he said anything other than that "You had better not come back."

Q. I will ask you, Mr. Petty, if you were scared and afraid to work under those circumstances?

Mr. Pettus:

We object to that, incompetent, irrelevant, and immaterial, mental operation.

The Court:

Overruled.

Mr. Pettus:

We except.

A. Naturally, yes, sir.

Mr. Pettus:

We move to exclude it.

The Court:

Overruled.

Mr. Simpson:

You can have the witness.

Cross Examination.

By Mr. Pettus:

Q. Mr. Petty, you said that there were two or three other men there with Mr. Pennington?

A. Yes.

Q. And do you see them here?

A. No, I don't. I don't recognize any of them.

Q. You don't recognize any of the other men that were there?

A. No, sir.

Q. Is that right?

A. No, sir.

Q. About what time of the day was this?

A. It was a little after 4:00 o'clock.

Q. And what was the closest you got to anyone of the men?

A. Well, in the office I didn't get very close to them. Outside they were standing about 10 feet from the platform where I walked out of the office.

Q. About 10 feet away?

A. Yes.

Q. Was all of the conversation on this occasion carried on in just a conversational tone of voice, that you could hear over the room?

A. Yes.

Q. Was Mr. Toone there at that time?

A. Yes.

Q. Who is Mr. Toone?

A. He is the L&N Special Agent, Police.

Q. Did he have his gun on him then?

A. I imagine so.

Q. On that occasion from the time the first, when the man first came into the office there until you left, about how long was that time that elapsed?

A. About 15 to 20 minutes.

Q. 15 to 20 minutes?

A. Yes.

Q. Now, the money was put away, was it not?

A. Yes, sir.

Q. And the office closed up?

A. Yes, sir.

Q. And every one left in an orderly way there, didn't they?

A. Yes.

Q. And during that whole 15 or 20 minutes did you see any newspaper, either Decatur newspaper or Birmingham newspaper, that had anything in regard to the walkout in it?

A. No, sir.

Q. You didn't see anything like that?

A. No, sir.

Q. And on that afternoon none of the men offered to strike you or do anything of that sort to you, did they?

A. No, not that time.

Q. I mean there wasn't anything of that sort that occurred that afternoon?

A. No, no violence whatever.

Mr. Pettus:

All right. Thank you, sir.

Mr. Simpson:

That's all, Mr. Petty. Come down.

The Court:

Come down.

Mr. Simpson:

May Mr. Petty be excused?

The Court:

Yes, unless there is objection he may be excused.

Mr. Pettus:
So far as we are concerned he may be excused.

(Witness excused.)

Mr. Simpson:
Tell Lee Thomas to come in, please.

LEE THOMAS, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:
Q. Is your name Lee Thomas?
A. Lee Thomas, yes, sir.
Q. Lee, where do you live?
A. Titusville, Birmingham.
Q. How is that?
A. Out there in Titusville.
Q. Is that the colored section right out here?
A. Colored section, Titusville, yes, sir.
Q. How long have you lived in Birmingham?
A. I have been here ever since I was a boy, 1894.
Q. And who do you work for, Lee?
A. Now?
Q. Yes.
A. L&N Railroad.
Q. How long have you worked for the L&N Railroad?
A. I started in 1910, July.
Q. That would be about 46 years then, wouldn't it?

A. Yes, sir, the first work I did was here in this town.

Q. You are going to have to talk out so all of these gentlemen can hear you, Lee.

A. 1910.

Q. 1910?

A. Yes, sir.

Q. That's loud enough.

A. 1910, July.

Q. All right.

A. Yes, sir.

Q. What sort of job do you do for the L&N Railroad?

A. Fireman.

Q. Do you remember when this strike occurred here in Birmingham, or walkout, last October, on Sunday?

A. On a Sunday. I didn't know it until I got back on my run.

Q. What run had you had that day?

A. 76.

Q. Where does 76 go?

A. It runs from New Orleans to Cincinnati I guess. We stopped here. Our junction point is here.

Q. Your junction point is here?

A. Yes, sir.

Q. Where did you get on that engine that day?

A. Montgomery.

Q. Where were you due to get off?

A. Boyles.

Q. At Boyles?

A. Yes, sir.

Q. It was a freight train then?

A. Sir?

Q. It was a freight train, wasn't it?

A. Yes, sir, freight train.

Q. Who was your engineer?

A. Hobart Parker.

Q. Hobart Parker?

A. Yes, sir.

Q. Now, as you came on into Birmingham, you hadn't heard, I believe you say, anything about the strike?

A. I hadn't heard anything about it.

Q. When you got down here to the 18th Street crossing, did anything unusual occur?

A. Well, when we stopped there, Weldon and another fellow got up on the engine.

Q. That is Mr. Jim Weldon?

A. Yes, sir.

Q. And another man?

A. And another man.

Q. Were they due to get on the engine there? Were you due to pick them up, to pick up anybody there?

A. We wasn't due to pick up nobody, but they got up there when we stopped.

Q. When you came to a stop at 18th Street?

A. They boarded the engine.

Q. You had to come to a stop there in bringing that train in there, didn't you?

A. We had left our train at Jemison.

Q. You had been ordered to leave your train at Jemison?

A. Yes, sir. We had three units and the caboose.

Q. You had three Diesel units and the caboose?

A. Yes, sir.

Q. When you got to 18th Street what did you stop for?

A. Stopped there to get orders, come on and go to Boyles or what, was we to take the engine to Boyles or what to do with it.

Q. Well, you stopped there?

A. At the 18th Street Telegraph Office.

Q. At 18th Street Telegraph Offie to pick up your orders?

A. That's right.

Q. When you stopped, then Mr. Sexton and this other man—I mean Mr. Jim Weldon and the other man that you can't identify got on your engine?

A. Got on the engine.

Q. When Mr. Weldon and this other man got on there did they say anything to you?

A. When they first got on the engine they went to talking to Mr. Parker.

Q. Talking to Mr. Parker?

A. Yes, sir.

Q. Did they give you any attention?

A. They didn't say nothing to me until we got down to the crossover switch, to cross over to take the train, the engine over under the shed.

Q. Did they stay on your engine?

A. They stayed on there until we backed up.

Q. Until you backed up?

A. Yes, sir.

The Court:

Was this at Boyles?

Mr. Simpson:

No, no, down here at 18th Street Passenger Station.

The Witness:

18th Street. We backed up in No. 4 track.

Q. No. 4 track?

A. Yes, sir.

Q. Down here in the passenger shed?

A. Yes, sir.

Q. They stayed on your engine all that time?

A. On the engine, yes, sir.

Q. Now then, what was the first thing they said to you?

A. Said "God damn you", says "You better not come out here no more." I says "What's the matter now?" They said "Its a strike."

Q. You asked them what was the matter?

A. Yes, sir, I said "What's the trouble?" They said it was a strike.

Q. They said it was a strike?

A. A strike, and "God damn you, you better not come out here. If you do, I'm going to kill you."

Q. They said if you did they were going to kill you?

A. He was going to do it, Mr. Weldon was going to do it.

Q. That is Mr. Weldon?

A. Yes, sir, he was saying that.

Q. Did he say anything about whether this strike was going to be like that other one?

A. No, sir, he said "This strike isn't like the other one, its different, and you had better not come out here, God damn you, I'll kill you."

Q. Did he have anything in his hands when he said that?

A. He had a knife, switch-blade knife, and shook it at me just that way (illustrating), he says "God damn you, I'll kill you."

Q. All right.

A. That's right. I was scared.

Q. You were scared?

A. I was scared to death.

Mr. Pettus:
We move to exclude that, that "I was scared to death.".

The Court:
I will sustain the objection and exclude that gentlemen, at this juncture, because it was a voluntary statement on the part of the witness.

Mr. Simpson:
All right.

Q. I will ask you then, were you scared, Lee?

Mr. Pettus:
We object to that.

A. Yes, sir.

The Court:
I overrule that.

The Witness:
You overrule that?

The Court:
Yes.

Q. Now, these other men, did this other man that stayed there that got on there with Mr. Weldon, did he say anything to you about it?

A. He said "That's a scab anyhow, ain't he?" Weldon, he says "Yes, but God damn it, he ain't going to scab this time."

Q. Now then, did you stay on that engine or did you get off?

A. Oh, I stayed on there until we had orders from Mr. Mitchell to shut all the engine down, put out the lights, charge everything necessary, and then go home.

Q. You left it in the L&N station?

A. Yes, sir, we left it in the L&N shed.

Q. When you left that engine, where did you go?

A. Downstairs to the booth to call up the man to come and get me.

Q. You mean down in the lower level down there where that public telephone booth is?

A. Where the public telephone booth is.

Q. In the L&N station?

A. In the L&N station.

Q. Did you go in that booth?

A. I went in there, yes, sir.

Q. Tell us what happened around there?

A. Well, when I went in there, and I looked back around, they were standing out there, he was, all around, about four or five of them.

Q. Four or five of them?

A. He shook his knife again. He says "What are you doing in here?" I says "I'm calling up to go home." "God damn it, you are going to get killed yet. I'll kill you if you come back here." I says "I'm not coming back, you need not worry. I won't be back."

Q. Did he go away then?

A. After I called up and the man come, they stood and watched to see the man come and get me, then they all went away. I looked back when I was getting in the car.

Q. Then they left?

A. Then they left, then I left and went on home

Q. You didn't go back any during that strike, did you?

A. Unh-unh, no, sir, I didn't go back.

Mr. Simpson:

You can have the witness.

Cross Examination.

By Mr. Pettus:

Q. Lee, after all of these events that you have testified about, did Mr. Weldon offer to take you home in his automobile, or to get you carried home in an automobile?

A. Mr. Weldon offered to carry me home?

Q. Yes.

A. No, sir.

Q. Did anybody there offer to take you home in an automobile?

A. Nobody.

Q. Nobody?

A. I called the man to get me.

Q. What time did you pull into the Passenger Station?

A. I think it was about 11:30 or 11:45. I never looked at my watch.

Q. About 11:30 or 11:45?

A. Yes, sir.

The Court:

Was that on Surday or on Monday?

The Witness:

Sunday night.

Q. What time did you leave Jemison?
A. Jemison?
Q. Yes.
A. I didn't pay it any particular attention. It was around 10:00 o'clock at night.
Q. Around 10:00 o'clock?
A. When we set the train out there.
Q. You came on into this station?
A. Yes, sir.
Q. Are you sure it was Mr. Weldon that had the knife or was it the other man?
A. Something else? That was a knife.
Q. He had a knife, did he?
A. Yes, sir.
Q. He had it out?
A. He had it out, shaking it at me, just like this (illustrating).
Q. He had it right in front of you where you couldn't miss it?
A. He had it where I could see it, right like that (illustrating).
Q. The knife didn't look very sharp, did it?
A. It looked like a razor, as sharp as it could be

Mr. Pettus:
That's all.

The Witness:
That's all?

Mr. Simpson:
That's all, Lee.

The Witness:
All right.

Mr. Simpson:
Can this witness be excused, gentlemen?

The Court:
He can be excused unless there is objection.

Mr. Pettus:
We excuse him.

The Court:
You are excused.

(Witness excused.)

Mr. Gibson:
Call Mr. Claude Johnston.

CLAUDE JOHNSTON, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Gibson:
Q. Is this Mr. Claude Johnston?
A. It is.
Q. Do you live in Birmingham?
A. Yes, sir.
Q. For whom do you work Mr. Johnston?
A. At the present time I work for the Birmingham Southern Railroad Company.
Q. What is your title there?
A. Assistant to the Vice-President.

Q. In October, of 1955, will you tell the jury whether or not you were an employee of the L&N Railroad Company?

A. I was employed by the L&N Railroad Company as Division Engineer of the Birmingham Division.

Q. Where was your office at that time?

A. At 1909 Morris Avenue.

Q. Do you recall in October, of 1955, when there was a strike or work stoppage?

A. I do.

Q. When did you first hear about it?

A. At about 6:30 a. m., one of my track supervisors called me at my home and said that there was some kind of disturbance in front of the office building.

Q. Did he tell you what was going on down there?

A. He said that it appeared to be a strike, that there were—

Mr. Taylor:

If the Court please, we object to that and move to exclude it.

The Court:

I sustain the objection and exclude it, gentlemen.

Q. What, if anything, did you do then Mr. Johnston?

A. I came to the office building in about 30 minutes after he called me.

Q. All right, sir, what, if anything, did you see there?

A. Well, I saw—

Q. Out of the ordinary?

A. Well, I saw several people milling around on the street in front of the office building. Some I recognized, and some I did not, many of them that did not report to that point for duty. I saw several maintenance of way men there that asked me what was going on, and I was unable to tell them.

Q. Stop there a minute.

A. All right.

Q. The maintenance of way men are men who came under your supervision?

A. Yes, they came under my supervision.

Q. All right, proceed.

A. They asked me if I knew what the situation was, and I told them that I did not. And they asked me what they should do, and I told them to go to work, that so far as I knew there was no reason why they should not. Most of them left in 30 minutes or so.

Q. Did you remain there or did you go away?

A. I remained in the vicinity of the entrance to the office building for 2 or 3 hours.

Q. That entrance is right on the sidewalk, isn't it?

A. As a matter of fact, one step encroaches slightly on the sidewalk.

Q. And the stairs go up from the sidewalk?

A Stairs, you go up from the sidewalk.

Q. What is up on the second and third floors, or was there then?

A. Well, the Division offices are located on the second floor, and also on the third floor. My office was on the second floor, and the Superintendent's office was on the second floor.

Q You said you stayed there about 3 hours, or 4?

A. That's right.

Q. Did you go inside of the building?
A. Not right away, I didn't go in it.
Q. Did you see any people that you recognized?
A. Well, I saw one fireman that was later identified to me as Mr. Thomas.
Q. Do you see him in the Courtroom now?
A. Yes, sir, I see him in the Courtroom.
Q. All right, sir.
A. Over there (indicating).
Q. Is that Reese Thomas?
A. Reese Thomas.
Q. Yes, sir. Now, just tell the jury what, if anything, you saw Reese Thomas do on that Monday, and tell them what you heard him say.
A. Well, I had started to enter the building and Mr. Thomas asked me if I was going upstairs, and I said that I probably would later on, but I hadn't planned to go up right away. And he was in front of the entrance as if to block it.

Mr. Taylor:
We object to that and move to exclude it.

The Court:
I sustain the objection, or grant the motion, "As if to block it."

Mr. Gibson:
Yes, sir. Your Honor is not excluding the statement he was in front of the entrance?

The Court:
No, in front of the building.

A. He was in front of the entrance to the building, and was engaging in loud conversation with several people that came up to the entrance.

Q. Well, what, if anything, did you hear him say to any of these people who came up?

A. Well, he told them that there was a strke on the Railroad, and that there was nothing going on upstairs, there was no one up there, and they shouldn't enter the building, and stood in front of the entrance.

Q. Did he say that one time or more than one time?

A. Well, it was several times. There were several people that came to the building, apparently to enter the building on business.

Q. Did you see Ben Mitchell that morning?

A. I saw Ben Mitchell, who at that time was Trainmaster at the Boyles Terminal. And he blocked the entrance to the building and told Mr. Mitchell not to go upstairs.

Mr. Taylor:

We object to that, and move to exclude it, as to blocking. That calls for a mental operation and a conclusion of the witness.

Mr. Gibson:

I think that is a shorthand rendition, your Honor.

The Court:

Physically speaking: I overrule it. If he was physically blocking the entrance.

A. He interfered with the entry to the building.

The Court:
Overruled.

Mr. Taylor:
We move that be exeluded, voluntary statement and another conclusion.

The Court:
Overruled.

Mr. Gibson:
All right, sir.

Q. Did you see Mr. Mitchell and Mr. Thomas together at the entrance that morning?
A. I saw them together at the entrance.
Q. Do you know Mr. H. G. Breetz?
A. Yes, I do.
Q. Did you see him on Morris Avenue that morning?
A. I saw him on Morris Avenue that morning.
Q. Will you tell the jury what, if anything, occurred when Mr. Breetz was there?
A. Well, Mr. Breetz attempted to enter the building and was told that no one was upstairs, that it would not be necessary for him to go up. And then some one asked him who he was and he replied "I am a railroad man", and they asked him what he did for the Railroad, and he said that was his affair.

Mr. Taylor:
Excuse me, Mr. Johnston. Your Honor, we object to these unidentified sources of statements, that "they" said so and so.

The Court:
I sustain the objection.

Mr. Gibson:
We will connect it up. If we don't, it will go out.

Mr. Taylor:
I don't want it to go in, if a fictitious person is talking.

Q. All right, go ahead.

The Court:
Was Mr. Thomas there present at that time?

The Witness:
Yes, he was present there at the time Mr. Breetz attempted to enter the building.

The Court:
All right.

Mr. Taylor:
He was not talking, is that right? That's what I am trying to get over.

The Witness:
Mr. Thomas did enter into the conversation.

The Court:
I overrule the objection.

Mr. Gibson:
All right.

Q. What happened after that?

A. Mr. Breetz left without further entry.

Q. Were there or not other people who came there during that period also?

A. There were some other people that came there. One person, whom I cannot identify, with a baggage check, stated that he desired very much to obtain a piece of baggage from the baggage room. And he again was told by Mr. Thomas that the Railroad was on strike, and that it was impossible for him to get into the baggage room, and this person left.

Q. About what time of day was it when you left there?

A. I would say approximately 11:00 o'clock.

Q. Was Reese Thomas still there?

A. He left before I did.

Q. About what time of day?

A. I don't remember, but it was probably about 10:30.

Mr. Gibson:

You may have the witness.

Cross Examination.

By Mr. Taylor:

Q. Mr. Johnston, what was your employment in October, 1955?

A. I was Division Engineer of the Birmingham Division.

Q. Did you have any duties along Morris Avenue this morning?

A. My office was in the building on Morris Avenue.

Q. Did Mr. Kirchner tell you to go down there on Morris Avenue and see who you saw down there?

A. No.

Q. Did anybody tell you to?

A. No.

Q. You couldn't perform any of your duties down there on the street, could you?

A. Well, I could perform my duties to the extent that I could answer questions from members of the Maintenance of Way Department who worked under my supervision.

Q. They all left after you got there?

A. Not immediately.

Q. Within 15 minutes or so?

A. I recall about 10:30 other members of the Maintenance of Way Department came along.

Q. So you posted yourself down there on Morris Avenue for 3 hours to tell the maintenance of way employees what was going on, is that right?

A. Not solely for that purpose.

Q. What time did you arrive there, Mr. Johnston? This is Monday morning we are talking about, the 24th of October, is that correct?

A. I believe I said approximately 7:00 o'clock.

Q. You got there at 7:00 o'clock?

A. About that time.

Q. Who was in the vicinity of Mr. Kirchner's office at that time?

A. Do you mean the entrance to the building?

Q. Yes, sir, the entrance to the building.

A. Well, I saw Reese Thomas there, and I saw Mr. Schilleci there. Those are the only two men I recognized.

Q. Did you see Joe Saab there?

A. Later on I saw Joe Saab there.

Q. Now, how long have you known Reese Thomas?

A. I haven't known Reese Thomas personally at all.

Q. How long had you known him on October 25?

A. Only after he was pointed out to me.

Q. Or the 24th—excuse me.

A. Only as he was pointed out to me.

Q. Had you ever seen Reese Thomas before that Monday morning, Mr. Johnston, to your knowledge?

A. I had seen him but I didn't know his name.

Q. Where had you seen him?

A. I had seen him in the Yards at Boyles and on trains.

Q. Now, you didn't know who he was?

A. Well—

Q. When you saw him down there did you?

A. Well, I knew he was an employee of the Railroad.

Q. You didn't know who he was?

A. I couldn't identify him.

Q. You didn't know he was a switchman or fireman or engineer?

A. I knew he was a fireman.

Q. You knew he was a fireman?

A. Yes, I knew he was a fireman.

Q. You didn't know his name?

A. No.

Q. We can agree on that, can't we?

A. I didn't know his name at that time, no, sir.

Q. And you didn't know Charlie Schilleci's name, did you?

A. I knew Charlie Schilleci.

Q. All right, you knew him?

A. Yes.

Q. When did you find out that man you thought you saw, or the man you saw was Reese Thomas?

A. I asked Mr. Camp his name, shortly after I arrived.

Q. Where was Mr. Camp?

A. Mr. Camp was in front of his office, which is adjacent to the entry to the building.

Q. That would be about 7:15 or 7:30?

A. Approximately that.

Q. Did Mr. Camp come out on the sidewalk with you?

A. Yes. As a matter of fact, he and I stood there talking for some time.

Q. Now, how was Mr. Thomas dressed?

A. I believe he had on a sport shirt, sort of a loud colored sport shirt. It has been some time ago, I don't remember those details.

Q. You don't remember those details?

A. No.

Q. Did he have on a jacket of any kind?

A. I believe it was a gray jacket.

Q. Kind of a gray jacket?

A. Yes, sir.

Q. How was Mr. Schilleci dressed?

A. He had on a sport shirt, but I don't remember the color of it.

Q. Let me note this down. You say Mr. Thomas had on a sport shirt and a gray jacket, is that right?

A. That's the way I remember it.

Q. Is that what you said?

A. That's the way I remember it.

Q. Now, you arrived there about 7:00 o'clock I believe you said?

A. About that.

Q. You saw Mr. Reese Thomas out in front of the doorway when you first got there?

A. Or shortly after I got there.

Q. Well, you talked to Mr. Camp about 7:15 and you saw him out there then, didn't you?

A. Yes, that's right.

Q. So you saw him out there between 7:00 and 7:15 on Monday morning, is that correct?

A. Yes.

Q. Now, how long did you stay there?

A. Until about 11:00.

Q. And did Mr. Thomas leave before you did?

A. I believe he did.

Q. About what time did he leave?

A. I think about 10:30. I didn't make a note of the time, sir.

Q. All right. Well, from 7:15 on Monday morning, October 24 until 10:30, approximately, was Mr. Reese Thomas in your sight at all times there at Mr. Kirchner's doorway or in that vicinity?

A. No, not at all times because, if I remember right, I probably left there. I might have gone to get a cup of coffee, I don't remember.

Q. You didn't tell us that a minute ago, but let's go into it now.

A. All right.

Q. Did you leave to go and get a cup of coffee?

A. I did about 9:00 o'clock.

Q. About 9:00 o'clock?

A. Yes.

Q. How long did you stay gone?

A. About 10 minutes, I guess.

Q. And was Mr. Thomas there when you went to get the coffee?

A. Yes.

Q. Was he there when you got back?

A. Yes.

Q. Did you leave there any other time?

A. No.

Q. Did Mr. Thomas leave there any other time?

A. I don't know if he did.

Q. Sir?

A. I don't believe he did.

Q. Well, your judgment is that from 7:10 or 15 until 10:30, with the exception of the time you were gone to get a cup of coffee, he was in the vicinity of Mr. Kirchner's office at all times, is that correct?

A. Yes, sir, that's right.

Q. What time did Mr. Ben Mitchell get down there that morning?

A About 8:00 o'clock I believe, sir.

Q. Was Mr. Thomas there when Mr. Mitchell got there?

A. He was, yes.

Q. When Mr. Mitchell got there?

A. He was.

Q. As a matter of fact, Mr. Thomas had been there at least 45 minutes before Mr. Mitchell got there, hadn't he?

A. He probably had, yes.

Q. Did I understand you to say that Mr. Schilleci was standing alongside of Mr. Thomas at the doorway to Mr. Kirchner's office?

A. He was in the vicinity of the door.

Q. Was he there when Mr. Ben Mitchell came?

A. I don't recall.

Q. You don't recall?

A. No. Mr. Schilleci came and went two or three times. He didn't stay there long.

Q. Did Mr. Schilleci do most of the talking down there to these people?

A. Not necessarily.

Q. Do you know where that Union News office is located down?

A. Union News office, or the lunch room?

Q. The lunch room?

A. Yes.

Q. Did you ever see Mr. Thomas go up there around that?

A. No, I didn't.

Q. Could you have seen him from where you were posted down there had he gone up there?

A. I probably could have, but I might not have observed it if he had gone.

Q. Did any other L&N officials come down on Morris Avenue while you were there besides Mr. Mitchell?

A. No.

Q. You have already mentioned him?

A. Not that morning.

Mr. Taylor:

I believe that's all.

Mr. Gibson:

Just one more question.

Re-Direct Examination.

By Mr. Gibson:

Q. Mr. Johnston, this Joe Saab that you saw down there, do you know what his occupation with the Railroad Company was?

A. Mr. Joe Saab is a fireman.

Q. Charlie Schilleci, the man you say you saw and recognized, what was his occupation?

A. He was a fireman.

Mr. Gibson:

That's all. Come down. May this witness be excused?

The Court:
Unless there is objection you may be excused.

Mr. Pettus:
No objection.

(Witness excused.)

The Court:
Call your next witness.

Mr. Simpson:
Mr. Long.

JOHN D. LONG, a witness called by and on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:

Q. Mr. Long, will you state your name, please, sir, to the jury?
A. John D. Long.
Q. Where do you live?
A. Hartselle.
Q. Alabama?
A. Yes, sir.
Q. Where do you work?
A. Decatur Freight House.
Q. Who do you work for at Decatur?
A. Louisville & Nashville Railroad.
Q. At the freight house?
A. Yes, sir.

Q. Now, that is the office downtown?

A. Yes, sir.

Q. How long did you say you worked for the L&N or did I ask you that?

A. Going on 13 years.

Q. Were you on duty on the afternoon of Monday, October 24, last year?

A. Yes, sir.

Q. What are your duties?

A. Rate clerk.

Q. Where does that keep you, where is your desk?

A. Second desk as you go in the freight house, freight office there.

Q. If you enter at the front door, you are the second desk on the inside?

A. Yes, sir.

Q. As you enter to the right it is what?

A. Cashier.

Q. Cashier?

A. And rate clerk.

Q. And rate clerk to the left?

A. Yes, sir.

Q. That's you?

A. Yes, sir.

Q. I will ask you whether or not on the afternoon of that day, that is Monday, the 24th of October, anybody came in there, any unusual occurrence happened in your office?

A. Well, two men came in and asked the Cashier who was in charge and he told them Mr. Hardwick. Mr. Hardwick was out. he was in the yard. They said, one fellow spoke out and said "I guess you know we're on strike, and we would like for you to come out." And one of the other men looked at the operator, and called him some nickname, I forget what the nickname was.

Q. Called the operator by some nickname?

A. Yes, sir, said "Come on out." He said "I'm coming." And he got up and started out, and I started to get my papers out of my desk, my BA sick card and my Social Security card. And one of them came on around and said "Let's go."

I said "I've got to get my cards, personal things out", and he says "Make it snappy and get out."

Q. He said "Make it snappy and get out"?

A. Yes, sir. And so I got out.

Q. And you got out?

A. Yes, sir.

Q. Had you had any plans to get out before he came in there and told you to get out?

Mr. Pettus:

We object to plans.

A. No, sir.

Mr. Pettus:

Mental operation.

The Court:

I sustain the objection.

Q. You were there doing your work up until the time he came in, were you?

A. Yes, sir.

Q. When he came and told you to get out, you got out?

A. Yes, sir.

Q. Now, did he say anything to you about what he would do to you if you didn't get out, when you were getting out your Social Security card there?

A. No, sir, not exactly. He said "Get your things and get out and make it snappy and get out."

Q. Did he say anything to you—did you recognize either of those men? Did you know either one of them by name?

A. No, sir, never seen them before.

Q. That was the same occasion that Mr. Smith and Mr. Petty were in there?

A. Yes, sir.

Q. They were also in the office at that time?

A. Yes, sir, four or five of us were in the office.

Q. Four or five in that office?

A. Yes.

Q. Had you personally ever seen either of those men before?

A. No, sir.

Q. When you got outside, did anything pass between you and either of those men?

A: Well, I asked one of them if—I said we had to come back tomorrow.

Q. You asked what?

A. I asked one of them,—I told him we would have to come back tomorrow, rather, unless they put up a picket line to protect us by. And one of them pulled a paper out of his pocket and showed me and said "We're on strike, we don't have to have a picket line up."

And I told him that we would have to have some kind of protection, we would have to be at work unless there was a picket line up.

Q. What did he say to you when you said that?

A. He said "You wouldn't have to have a picket line up." I heard one of them tell Mr. Petty that "We better not come back and catch you in tomorrow morning", and they did,—to not come back tomorrow

morning, if he came back it would cause him another trip up there, not to come back.

Q. All right. Was one of those fellows sort of a red, sandy haired fellow?

A. Yes, sir.

Q. Did you hear him have a conversation with Mr. Toone?

A. I heard him tell Mr. Toone that he fired back during the other strike, and if he fired—

Q. You heard this red headed man say something?

A. Yes, sir.

Q. He said it to Mr. Toone?

A. Yes, sir, to Mr. Toone.

Q All right, now, what did the red headed man, or the sandy haired man say to Mr. Toone?

A. He told him he fired before during the other strike, 58 day strike, "If you fire this time, you will fire in hell."

Q. Because what?

A. Because—

Mr. Pettus:

We object to leading.

Mr. Simpson:

I'm not leading.

Q. Finish the conversation that you heard.

A. He went on to tell him he got in trouble before, and he didn't mind getting in trouble this time.

Q. If Mr. Toone fired this time he would fire in hell?

A. Yes.

Q. All right. Did Mr. Toone say anything back to him, or aggravate him?

A. No, sir; best I remember, Mr. Toone told him, said "We don't want any trouble. I would hate to see you get in trouble. I'm sure I don't want to get in trouble."

Q. All right. Did you hear this man say to Mr. Petty anything about what had happened before?

A. Yes, sir, one of them told Mr. Petty that he got whipped before.

Mr. Pettus:

We object to that, incompetent, irrelevant, and immaterial; no identification involved here.

Mr. Simpson:

This was said at this time, if Your Honor please.

The Court:

It is the same occasion as I understand.

Mr. Simpson:

Yes, sir.

The Court:

Overruled.

Mr. Pettus:

We except.

Q. What did he say to him?

A. One of them told Mr. Petty he got whipped before, and said he would get whipped worse this time.

Q. I don't know whether these gentlemen can hear you or not, you talk so fast and so indistinct. I'm afraid they are not getting what you are saying. Tell

us again in a distinct way what this man said to Mr. Petty?

Mr. Pettus:
We renew our objection.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Take your hand down from your mouth.

A. Mr. Petty was walking out towards his car, and one of the fellows told Mr. Petty that he got whipped before, and he would get whipped worse this time; it would be best for him not to come back the next day.

Mr. Pettus:
We move to exclude the answer.

The Court:
Overruled.

Mr. Pettus:
We except.

Mr. Simpson:
You can have the witness.

Cross Examination.

By Mr. Pettus:

Q. Let me ask you now which one of the men made the first statement when they came in the office there?

A. The small fellow. I have never seen either one of them before; I didn't know his name.

Q. There was just two of them, is that right?

A. Two that I remember.

Q. Just two that you remember?

A. There could have been three. I don't remember whether there were three or not.

Q. You just remember two?

A. I remember two of them.

Q. You described one of them as a small fellow, and another as a sandy haired fellow?

A. Yes, sir.

Q. Those were the only two you saw?

A. I saw five or six more on the outside, but I didn't pay any attention to them.

Q. You saw five or six more?

A. Yes, sir, on the outside, but I didn't pay any attention. I didn't know them.

Q. You don't know who they were, do you?

A. I don't know who any of them were.

Q. You don't know who any of them were?

A. No, sir.

Q. You just saw five or six strangers on the outside, and saw two strangers inside?

A. Yes, sir.

Q. When was the newspaper shown to you?

A. When I walked outside, and I told—that fellow said not to be back and I said we would have to come back unless the picket line was up to protect us. I

told him we would have to have some kind of portection, or we would have to come on to work.

Q. Then he showed you the newspaper, is that right?

A. Yes, sir.

Q. At that time Mr. Toone was standing right there, wasn't he, Mr. Long?

A. Yes, sir.

Q. Mr. Toone is Special Agent for the L&N?

A. Yes.

Q. And he had his gun on him at that time?

A. I don't know whether he had a gun or not.

Q. He usually carries a gun, doesn't he?

A. I couldn't say.

Q. You know Mr. Toone?

A. Yes, sir.

Q. Mr. Toone told these men at that time that he didn't want to have any trouble, didn't he?

A. Yes, sir.

Q. They told him there wasn't going to be any trouble, didn't they?

A. Unless they came back next morning.

Q. But there wasn't any trouble was there?

A. No, sir, we didn't have any trouble that afternoon—

Q. Well—

A. —because we go out, like they ordered us to.

Q. Did you have any trouble next morning?

A. No, sir, didn't work next morning.

Mr. Simpson:

He interrupted the witness before he finished answering.

A. We didn't work next day.

Q. I say, you didn't have any trouble?

A. No, sir.

Q. When did you start back to work?

A. Stayed off two days.

Q. Stayed off two days and then came on back?

A. Yes, sir.

Q. What were your duty hours that day?

A. 8:00 a. m. until 5:00 p. m., 12:00 to 1:00 for lunch

Q. What is that?

A. 12:00 to 1:00 for lunch.

Q. What time did these men first show up?

A. I would say it was around 4:20. I know it wasn't too long before quitting time.

Q. You were out of there by about a quarter of 5:00, or 5:00 o'clock?

A. A little before then; about five minutes after they came in there.

Q. About five minutes?

A. Yes, sir.

Q. Everybody hadn't left when you did then? Mr. Petty and Mr. Smith—

A. Mr. Petty and Mr. Smith was still in the office, trying to put up some money.

Q. They were still back in the office, weren't they?

A. Putting the safe up when I walked out the door.

Q. Now, all of these conversations that you have been taking that they had with Mr. Petty and so on, were they in your presence?

A. Yes, sir.

Q. Or is that what somebody told you?

A. I didn't leave the premises. I walked on the outside of the freight office.

Q. In other words, you waited until they were ready to go out, did you?

A. Yes, sir.

Q. Then everybody walked out together?

A. No, I was already outside of the office, but the talking to Mr. Petty was when he got out on the platform, outside of the freight office.

Q. Then you all just walked off the premises, and is that all?

A. Well, we got in our cars.

Q. And drove off?

A. Yes, sir, I did. I didn't stay to see what they did.

Q. Mr. Long, Mr. Toone is Special Agent, regularly assigned up there at Decatur, isn't he?

A. Yes, sir.

Q. It is his duty to preserve order on the Railroad, isn't it, on the Railroad property?

A. I don't know. I've got my job, and I don't know what his duties are to tell you the truth. I mean, I never investigated what his duties are.

Q. He was standing right there, wasn't he?

A. He was in the office, yes, sir, when they came in.

Q. At all times, was he?

A. Yes.

Q. He didn't interfere with anything that was going on there, did he?

A. Well, not in there, no, sir.

Q. He did not?

A. No, sir.

Q. And he didn't pull the gun or do anything of of that sort, did he?

A. No, sir, I don't know if he had a gun or not.

Q. You don't know if he had a gun or not?
A. I didn't see one, no, sir.

Mr. Pettus:
All right, that's all.

Re-Direct Examination.

By Mr. Simpson:
Q. I forgot to ask you, are you a member of the Clerk's Union, Mr. Long?
A. I am.
Q. What is the official name of that Union?
A. Railway, Steamship Clerks, and Handlers, Freight Handlers.
Q. What?
A. Railway, Steamship Clerks and Freight Handlers.
Q. Did you have any orders from your Union to strike?
A. No, sir.
Q. Or come out?
A. I did not. I called my Local Chairman that night, and he told us to go back the next morning.
Q. Your Local Chairman told you to go back the next morning?
A. Unless they had a picket line up.
Q. Unless they had a picket line up. Now, you didn't go back next morning?
A. I went in and stayed about 30 minutes, me and the Cashier and Chief Clerk. Nobody else came in, and we thought it best to leave.
Q. Were you scared to stay there?
A. Yes, sir, I was.

Mr. Pettus:
We object.

The Court:
Overruled.

Mr. Pettus:
We except. We move to exclude the answer.
Q. Your answer was what?
A. Yes, sir. I was afraid they might harm me or my family.

Mr. Pettus:
I move to exclude that.
A. I didn't want to take any chances.

The Court:
I sustain the objection to that.

Mr. Simpson:
All the details, "why".

The Court:
The details. You will not consider that, gentlemen.

Mr. Simpson:
I just wanted the answer to the one question.
Q. Were you scared?

Mr. Pettus:
We object to that.

The Court:
Overruled.

A. I was afraid to stay.
Q. Is your answer yes or no?
A. Yes, sir.
Q. You were?

Mr. Pettus:
We move to exclude the answer.

The Court:
Overruled.

Mr. Pettus:
We except.

The Court:
You may come down.

Mr. Pettus:
May I ask one question?

The Court:
Yes.

Re-Cross Examination.

By Mr. Pettus:
Q. Mr. Long, can you identify either one of those men in the Courtroom here?
A. I'm afraid I couldn't. I had never seen the men before. I would be afraid to say whether I recognize them or not.
Q. You won't swear—
A. I won't swear, because I might be wrong.
Q. —that you can recognize either one of the man that you say you saw them?
A. No, sir.

Mr. Pettus:
All right. Thank you.

The Court:
The witness may be excused unless he is needed further.

Mr. Simpson:
Mr. Long, you may go on back to Decatur.

(Witness excused.)

The Court:
Call your next witness Mr. Simpson.

Mr. Simpson:
Call Mr. McKenzie.

JAMES McKENZIE, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:
Q. Will you state your name, please, sir?
A. James McKenzie.
Q. Where do you live?
A. Cullman.
Q. Where do you work?
A. Well, I work four days a week at Cullman and one at Decatur.
Q. Do you work for the L&N Railroad?
A. Yes, sir.

Q. What is your job?
A. Operator.
Q. Telegraph operator?
A. Telephone.
Q. Telephone operator?
A. Yes, sir.
Q. And where were you on Monday, October 24, last year?
A. October 24, I don't remember the particular date.
Q. Well, let's say on Monday when the strike happened here at Boyles. Do you remember when the strike happened here in October, last year?
A. I was working at Oakworth.
Q. At Oakworth. Now, by that you mean up at Decatur?
A. That's right.
Q. That is the Decatur yard?
A. That's right.
Q. Are you a member of the Union?
A. Yes, sir.
Q. Which Union?
A. ORT.
Q. Order of Railroad Telegraphers?
A. Yes, sir.
Q. That is at that time?
A. Yes, sir.
Q. Now, you were there at the Oakworth or Decatur Yard Office?
A. Yes, sir.
Q. That is down at the roundhouse?
A. That's right.
Q. About a mile this side of the main part of Decatur, isn't it?
A. That's right.

Q. Did anybody come into your office there and create any disturbance that day?

A. Yes, sir.

Q. On that Monday?

A. Several men came in and told us to pull the pins, they had a strike going on at Boyles.

Q. Several men came in and said pull the pin?

A. Yes, sir.

Q. What do you Railroad mean by "Pull the pin"?

A. Take off.

Q. Take off?

A. Yes, sir.

Q. Well, did you take off?

A. Yes, sir.

Q. Were you scared?

A. I wasn't to say scared, but I just wasn't taking any chances, that's all.

Q. You were not taking any chances?

A. No, sir.

Q. And did you say anything to these men about you didn't see any picket line?

A. Yes, sir, I told them that I couldn't very well go off and leave my job unless there was a picket line, or either some sort of a threat or something of that description.

Q. What did they say to you about that?

A. They said "Well, we are going to be the last ones to leave." I said "That's good enough for me, I'm gone."

Q. You are gone?

A. Yes, sir.

Q. All right.

A. Yes, sir.

Mr. Simpson:
You can have the witness.

Cross Examination.

By Mr. Pettus:
Q. What office were you located in there at Decatur?
A. In the Yard Office.
Q. In the Yard Office?
A. Yes, sir.
Q. That's not the Freight Office?
A. No, sir.
Q. Not part of the Freight Office?
A. No, sir.
Q. How far is that Freight Office away from there?
A. Oh, it is a mile I imagine.
Q. It is a mile you imagine?
A. Its uptown.
Q. About what time did these men come in there?
A. I don't remember exactly. I got to work—well, I go to work at 3:00, but I got there about 2:30. I imagine somewhere a little after 4:00.
Q. A little after 4:00?
A. Yes, sir.
Q. How many men were there?
A. Right offhand I don't remember, but four or five I believe.
Q. Four or five?
A. I believe there were, I am not sure.
Q. Four or five men?
A. Yes, sir.
Q. Do you see any of them in the Courtroom?
A. No, sir.
Q. You don't see any of them here?
A. No, sir.

Q. Was there a newspaper displayed at any time during this conversation with the men?

A. Yes, one of them said, or he had a paper that said something about a strike in Birmingham.

Q. In other words, it was a Birmingham paper?

A. Yes, sir.

Q. And it had news about the strike in Birmingham, is that right?

A. Yes, sir.

Mr. Pettus:

All right, that's all.

Re-Direct Examination.

By Mr. Simpson:

Q. Had you ever seen any of these men before they came in there that you knew of?

A. No, sir.

Q. When you say you don't see any of them in the Courtroom, you mean you don't recognize any of them?

A. No, sir.

Q. You are not sure whether you would recognize them this long, nearly a year afterwards or not, are you?

A. I wouldn't have recognized them I don't guess if I had seen them next day really and truly.

Q. Yes, you don't mean to say there are not any here in the Courtroom?

A. No, sir.

Q. You just say you don't recognize them, is that right?

A. I don't recognize any of them, no, sir.

Mr. Simpson:
That's all. Come down.
May Mr. McKenzie be excused, Your Honor.

The Court:
He may be excused unless there is objection.

Mr. Pettus:
Yes, sir, we excuse him.

The Court:
You are excused.

(Witness excused.)

The Court:
Call your next witness.

Mr. Simpson:
Mr. Mehaffey.

JOHN C. MEHAFFEY, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:
Q. Will you please state your name?
A. Mehaffey.
Q. Is your name John C. Mehaffey?
A. Right.
Q. You live at Decatur?
A. Yes, sir.

Q. Work for the L&N Railroad?

A. Yes, sir.

Q. Your job is what?

A. Relief Clerk.

Q. You circulate around and do two or three jobs on the off days of the other men?

A. Right.

Q. Do you remember a Monday in October, of last year, when there was a strike here at Boyles beginning the previous Sunday?

A. I remember the occasion.

Q. I mean do you remember the occasion?

A. I remember the occasion when they said that is what it was, yes, sir.

Q. Where were you working on that Monday?

A. I was working at Oakworth, that is the Yards at Decatur.

Q. Yards at Decatur?

A. Yes, sir.

Q. What job were you on that day?

A. Relief Yard Clerk.

Q. Now then, did any unusual occurrence happen there that afternoon?

A. Yes, sir.

Q. At Oakworth or Decatur Yards?

A. Yes, sir.

Q. All right, what was it?

A. A group of men came in there from somewhere, came into the office.

Q. Do you know who any of those men were?

A. I only knew one.

Q. Who was that?

A. He was related to my ex-wife, J. C. Bentley. I don't know that he was with them, he didn't come in with them, and he didn't leave with them, and he didn't stay with them.

Q. He was there though?
A. He was there that day, yes, sir.
Q. At the time they were in the office?
A. Yes, sir.
Q. Outside the office or inside?
A. I don't know about outside.
Q. Where did you see Mr. Bentley?
A. I saw him inside looking on the call board, looking the call board over.
Q. All right, what happened when they came in?
A. Some man came around there and started talking to me and asked me if I knew there was a strike on at Boyles, and I said I did not, and he said that he had made a call up there and told them, and he asked me if I didn't know it, and I said I did not.
Q. Did he ask you anything about where the man was that he had talked to?
A. I don't remember whether he did or not.
Q. All right?
A. It has been a year ago and I just don't remember.
Q. That was a year ago and your memory is not clear about that?
A. No, sir, not all the details.
Q. When he said he had made a call up there, and didn't you know about it, what did you say?
A. I told him I had heard rumors that there was something to that effect in Boyles, but we hadn't been notified about it.
Q. All right then, what happened?
A. Well, he said "Well, there is one," and he says "We would like for you all to honor it." And I said "Well, we haven't been notified of the strike", and he asked me who we were supposed to get our au-

thority from, and I told him our General Chairman in Louisville.

Q. Who is your General Chairman?

A. Mr. Sam Faulkner.

Q. Faulkner?

A. Yes, sir.

Q. What Union was that?

A. That is the Clerk's Union.

Q. The Clerk's Union?

A. Yes, sir.

Q. You hadn't heard anything about any strike from your Union?

A. No, sir, I hadn't been notified.

Q. All right. Now, did you say anything about where is the picket line, or why you should quit?

A. No, sir.

Q. What happened?

A. No, sir, he just told me he would like for us to—said they honored our strike and he would like for us to honor theirs. And I told him if they put ou a picket line that we would honor his strike, and he said there would be one up.

Q. He said there would be one up?

A. Yes, sir.

Q. Did you stay there and wait for a picket line?

A. No, sir, I did not.

Q. Why didn't you? What happened then?

A. We went out. I left the premises.

Q. Did you say anything about what other conditions you would go out under other than a picket line?

A. I told him there was only one thing that I understood other than a picket line, and that was a threat.

Q. All right, what did he say then?

A. And he said well—I don't know the exact words, but he said something to the effect that they was "Telling us to leave."

Q. They were telling you to leave?

A. They didn't want anybody working.

Q. How many of you were in the office at that time?

A. I don't remember, five or six I think.

Q. Five or six?

A. Besides them; of the local employees I would say five or six.

Q. All right now, when he said he was telling you to leave were you scared?

A. Yes, I was.

Mr. Pettus:
We object to that.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Did you then leave immediately?

A. Yes, sir, I did.

Q. What was the attitude of the man who was talking to you there, what was he doing?

Mr. Pettus:
We object to that, or to the attitude.

Q. Well, what was he doing?

The Court:
I sustain the objection.

Q. Did he have anything, did you notice anything about the man unusual?

A. Well, I could tell he was angry.

Q. Did you see anything about his hands?

A. Yes, he had his fist doubled up, had it down by his side.

Q. Had his fist doubled up?

A. It was closed up, I couldn't say it was doubled up. It was just closed up.

Q. Can you describe the man that was talking to you?

A. I could not, no, sir, I wouldn' attempt to.

Q. At the time he was talking to you and telling you he was telling you to get out of there, where was Mr. J. O. Bentley?

A. He was across the office, looking at what we call the switchmen's board over there, and I assumed that he was going to roll up there, I don't know.

Q. When the man first came in your office that afternoon what was the first thing he said, do you remember?

A. No, sir, I don't.

Q. You don't remember the first thing?

A. No, sir.

Q. Do you remember him pointing his finger at anybody?

A. No, sir, I don't.

Q. Do you remember him doing anything, any counting or anything of that kind?

A. No, sir, I don't.

Q. He just said that they were on strike and wanted you out?

A. Yes, sir.

Q. And you went out?

A. Yes, sir.

Mr. Simpson:
All right, that's all. You can have the witness.

Cross Examination.

By Mr. Pettus:
Q. How many people were in the office there, Clerks?
A. I believe there were two.
Q. Two? I mean together? Is that all the employees that were on duty?
A. No, sir, there was an operator.
Q. There were more than that, weren't there?
A. Beg your pardon?
Q. There were more than three, weren't there? Was Mr. Toone there too?
A. Didn't you say Clerks?
Q. I asked you Clerks first, and then I want everybody.
A. He is not a Clerk there. He was there, yes, sir, Mr. Toone.
Q. How many L&N employees were on duty there?
A. There was Mr. Hardwick, our Agent, was there, and Mr. Toone.
Q. Just give me the number, if you know.
A. I believe five.
Q. Five?
A. Yes, sir.
Q. And during this discussion was a newspaper brought out?
A. Yes, sir, it was.
Q. It was?
A. Yes. It was a picture, I didn't see that it was a newspaper. I saw nothing but the picture.
Q. You saw a picture?
A. That's all.

Q. Did it have reference to the walkout in Birmingham?

A. It had a picture. I didn't read anything on it. It had a picture of what I assumed was a strike.

Q. Here in Birmingham?

A. Yes, sir. I don't know about Birmingham, I just saw that, that's all.

Q. How long were the men there in the room?

A. I would say approximately 15 or 20 minutes.

Q. 15 or 20 minutes?

A. Yes, sir.

Q. And during the course of the time that they were there and towards the end of it, didn't one of you there in the room suggest that they go down to the freight house and carry that newspaper down to the freight house, wasn't that said there?

A. I don't know about the newspaper, but the suggestion was made or the question was asked, were they going to the freight house.

Q. The question was asked?

A. Yes, sir.

Q. By one of the employees up there?

A. Yes, sir.

Q. At Decatur, wasn't it?

A. Yes, sir.

Q. Didn't some one there say that they would be interested in learning about it down at the freight house, about the walkout in Birmingham?

A. No, sir, I don't remember that, I don't remember him saying that, but he said something about they were going to the freight house.

Q. Going to the freight house?

A. Yes, sir.

Q. Didn't you hear somebody there suggest that they take the newspaper down to the freight house, or suggest they go down to the freight house?

A. Yes, sir, I have answered that.

Mr. Pettus:

All right, that's all.

Mr. Simpson:

That's all.

The Court:

All right, this witness can be excused unless there is objection.

Mr. Pettus:

We excuse him.

(Witness excused.)

The Court:

Gentlemen, remember the Court's warning about discussing the case with anybody or among yourselves. Be back in the morning at 9:00 o'clock.

(Whereupon, at 4:45 p. m. an adjournment was taken until 9:00 a. m., Wednesday, September 26, 1956.)

Wednesday, September 26, 1956, at 9:00 A. M.

The Court:

All right, you may call your next witness.

Mr. Simpson:
Mr. LeCroix.

THOMAS E. LE CROIX, JR., called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:

Q. Is this Mr. Thomas E LeCroix, Jr.?
A. Yes, sir.
Q. Where do you live?
A. Decatur, Alabama.
Q. Who do you work for?
A. I work for the Louisville & Nashville Railroad.
Q. What do you do?
A. I am a Clerk.
Q. Do you belong to one of the Brotherhoods?
A. Yes, sir.
Q. Which one?
A. Brotherhood of Railway and Steamship Clerks.
Q. Were you on duty at Decatur for the L&N Railroad Company on the 24th of October, last year?
A. Yes, sir.
Q. That was on a Monday?
A. Yes, sir.
Q. Were you in the Yard Office or in the Freight Office?
A. Yard Office.
Q. The Yard Office is the one closest to Birmingham?
A. Yes, sir.

Mr. Simpson:

May it please the Court, there is a little question of testimony that will arise here. This gentleman I am sure doesn't recognize Mr. Pennington's voice, but a man called him and said "This is Pennington", and Pennington later came.

I am submitting this testimony on the theory that it is all tied in together.

Q. Do you know W. F. Pennington's voice?

A. No, sir, I don't.

Mr. Pettus:

We object to that.

Q. On the telephone?

A. No, sir.

The Court:

Just ask the question and we'll see.

Q. Did you get a telephone call, long-distance on that date?

A. Yes, sir.

Q. Where was it from?

A. Birmingham?

Q. From Birmingham?

A. Yes.

Q. Was it on the Company phone or on the Southern Bell phone?

A. On the Bell phone.

Q. Southern Bell Telephone?

A. Yes, sir.

Q. What occurred when you answered your call?

Mr. Pettus:
We are going to object to that.

The Court:
I overrule the objection for the time bei

Mr. Pettus:
Incompetent, irrelevant, and immaterial.

A. Well, I don't remember exactly the exact words, but he wanted to know who I was. I gave him my name, and he asked if we were working up there, and I told him we were on duty.

Q. Did the man say who this was?

Mr. Pettus:
We renew our objection on the same ground.

Q. Go ahead and tell it.

The Court:
Overruled.

A. Yes, sir, he told me who he was.

Q. Tell us what he said.

A. He said he was W. F. Pennington, of Birmingham.

Mr. Pettus:
We move to exclude that answer, hearsay.

The Court:
Did you know who he was?

The Witness:
No, sir.

The Court:
Did you recognize the voice?

The Witness:
No, sir.

Mr. Simpson:
You see the testimony shows Mr. Pennington did come there when he said he would. I would like for the Court to hear this testimony before you rule.

The Court:
All right, I will hear the testimony and see.

Q. Go ahead and state just what happened.
A. Well, he asked me were we working up there, and I told him we were on duty. And he asked me did I know, or did we know there was a strike in Birmingham, and I told him we didn't, we didn't have anything on it. we had heard the rumor but we didn't have anything on it.
Q. Yes, sir
A. Nothing to back it up.

Mr. Pettus:
We move to exclude that answer on the grounds stated.

The Court:
Overruled.

Q. What else did he say then? Just finish the conversation.

A. Then he told me then they would be up there, I don't know how long, a coupie of hours or so, that he didn't want to find us up there working when they got there.

The Court:

Did a man by the name of Pennington identify himself as he came up later?

The Witness:

I didn't see him.

Mr. Simpson:

That testimony yesterday already shows that W. F. Pennington came in up there. Those people who knew him testified he did come in. As a matter of fact, there is no denial that he did.

The Court:

I don't think that is sufficient. I sustain the objection and exclude it, gentlemen. That is excluded from your consideration.

Mr. Pettus:

We except—excuse me, Your Honor, did you exclude that?

The Court:

Yes, sir.

Mr. Pettus:

Pardon me.

The Court:
You are excused.

(Witness excused.)

The Court:
All right, your next witness.

Mr. Simpson:
Call Mr. Tec Wilder.

T. B. WILDER, called as a witness on behalf of the Plaintiff being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:
Q. Is this Mr. T. B. Wilder?
A. That's right.
Q. Where do you live?
A. I live on 39th Court in Birmingham.
Q. Live where?
A. On 39th Court in Birmingham.
Q. 39th Court, Birmingham?
A. That's right.
Q. Mr. Wilder, be sure and talk out loud enough so everybody can hear you, please, sir.
A. Yes, sir.
Q. Who do you work for?
A. L&N Railroad.
Q. How long have you worked for the L&N Railroad?
A. Since 1923.
Q. What do you do for them?
A. Engineer.

Q. On what Division?
A. S&NA, Birmingham Division.
Q. You run out of Birmingham?
A. Yes, sir.
Q. Are you in freight or passenger service?
A. Both.
Q. Both?
A. Yes, sir.
Q. Do you recall the occasion last October when there was a strike or work stoppage here?
A. Yes, sir.
Q. On the L&N?
A. Yes, sir.
Q. Do you know when that started, what day of the week?
A. Yes, sir.
Q. We won't try to get the day of the month.
A. It started on Sunday.
Q. On a Sunday?
A. Yes, sir.
Q. Did you go on duty on that Sunday?
A. Yes, sir.
Q. Where did you go?
A. I went to Montgomery.
Q. On a regular assignment?
A. On a chain gang freight.
Q. On a chain gang freight?
A. Yes, sir.
Q. What time did you get to Montgomery on that Sunday?
A. Well, it was approximately 1:30 or 2:00 o'clock Monday morning, around that time.
Q. Was there anything unusual, did any strike or work stoppage occur, was there any work stoppage or strike in Birmingham when you left?

A. Not in Birmingham when I left, no, sir.

Q. What time did you leave?

A. Well, we was called that afternoon for, oh, it was around 5:00 or 5:30, or 4:30 or 5:00, something like that in the afternoon. We got out of the Yard befor anything happened.

Q. When you got to Montgomery you say it was around 1:00 o'clock Monday morning?

A. Around that time, yes, sir.

Q. On Monday morning?—

A. Yes, sir.

Q. When you got off duty where did you go?

A. We went to the hotel and went to bed.

Q. All right now, how did you happen to wake up, or what time were you awakened in the morning?

A. Well, Monday morning I woke up around, oh, the usual time, 7:00 or 7:30, something like that.

Q. And did you hear anything from the Railroad calier?

A. No, sir, not Monday.

Q. Did anything unusual happen there Monday?

A. No, sir.

Q. You stayed around the hotel and around town, did you?

A. That's right.

Q. When were you due to go back, or were you just on call?

A. Call.

Q. It was a question of calling, or when you were called?

A. When I was called. We were due to go back whenever they called us.

Q. Whenever they called you?

A. Yes, sir.

Q. You were not called on Monday?

A. No, sir.

Q. Where did you stay Monday night?

A. Gary Hotel, at the same place.

Q. How far is the Gary Hotel from the Yard Office there in Montgomery?

A. Well, approximately a mile or a mile and a quarter, something like that.

Q. A mile or a mile and a quarter?

A. Yes, sir.

Q. Do they send a caller when they call a crew, do they send a caller down to the Gary or do they call you on the telephone?

A. They send a caller down there part of the time, and part of the time, if we are sitting around there they call us over the telephone.

Q. Does the Gary Hotel specialize in any particular class or group of patrons?

A. They specialize in us railroad men. We have our certain place in there that we stay. No one stays in there except the railroad men.

Q. Railroad men?

A. Yes, sir.

Q. On Tuesday morning, what were the circumstances of your getting up then?

A. The Engineer, R. W. Whitney, came upstairs and woke me up.

Q. Engineer who?

A. R. A. Whitney.

Q. Whitney?

A. Yes, sir.

Q. All right.

A. R. A. Whitney came upstairs and woke me up. I had slept upstairs because I had had an awful cold, and I didn't want to sleep back in the other place on account of keeping the other men awake. I had

coughed all night. And he came upstairs and woke me up and told me to get up, that he had laid off, and they were fixing to run a Calera turnaround.

Q. Calera turnaround?

A. Yes, sir.

Q. Now, that means a train that would go as far as Calera and then turn around and come back to Montgomery?

A. That's right.

Q. All right.

A. I said "Well, I'll be right up in a few minutes", and I got up and messed around, washed, and came on downstairs then after he had woke me up.

Q. Yes, sir.

A. Of course, after I got downstairs then why, of course, they was tallking pro and con, between each other down there.

Q. When you came down in the lobby who did you see?

A. Well, there was the Engineer Mackin, Whitney, and Brown, Fireman Brown, A. C. Dismukes, A. E. Hicks, and J. B. Byram.

Q Dismukes, Byram and Hicks among the others?

A. That's right.

Q. L&N people who were down there?

A. Yes, sir.

The Court:

That was Tuesday morning, was it?

The Witness:

Yes, sir.

Q. You, of course, knew Mr. Dismukes, Mr. Byram, and Mr. Hicks?

A. That's right.

Q. Who were they?

A. Sir?

Q. What did they do for the L&N Railroad?

A. They are fireman.

Q. They are fireman?

A. Yes, sir.

Q. All right. Now, did either one of those three men have any conversation with you?

A. They was all talking to the—to each other there, and telling me they was aiming to call me, and that I had better lay off.

Q. Who said that to you?

A. Well, all of them was talking.

Q. All of them?

A. Yes, sir. Mr. Dismukes and Hicks and Byram all was talking.

Q. What did they say to you now?

A. They told us we had better lay off; we had better lay off. They were fixing to run a Calera turn-around, and if I wasn't going, I had better lay off.

Q. All right.

A. They was talking though, and I told them that the engineers wasn't on no strike, and if there wasn't any picket line that we had to go.

Q. Who was talking to them besides you?

A. Engineer Mackin, he was talking to them.

Q. Mackin?

A. Mackin, yes, sir.

Q. Engineer Whitney had already laid off, however?

A. He had already laid off, and he came and woke me up, so he said.

Q. How long did that argument and discussion go on down there?

A. Well, in about approximately 20 or 30 minutes, why the call boy came up there to call me.

Q. Who was the call boy, do you know his name?

A. Earl Webb, a colored fellow.

Q. You have seen him out here, haven't you?
A. Yes, sir.
Q. All right. Did he give you a call?
A. He gave me a call.
Q. What was the call?
A. Call for Calera turnaround.
Q. To leave Montgomery about when?
A. 8:00 or 8:30.
Q. What did you do when you got that call?
A. When I got that call, why they was telling me not to go, they were telling me I had better not go, that if I went, why, somebody would take a pot shot at me.
Q. Who said if you went somebody would take a pot shot at you?
A. Well, J. B. Byram told me that.

Mr. Pettus:
May it please the Court, we are going to object to that. It is not any of the Defendants being tried here that this conversation took place with.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Give Mr. Byram's exact words when he said that somebody would take a pot shot at you.
A. Well, he said not go up the road on that run, he said "If you do, somebody is liable to take a pot shot at you up the road", he said "If you go, I'll place you in the class of Ralph Graves."

Q. And is Ralph Graves, was that considered an undesirable class to be placed in?

A. Ralph Graves is the man that worked—

Mr. Pettus:

We object to anything about what Ralph Graves was.

The Court:

Overruled.

Mr. Pettus:

We except.

A. Ralph Graves is the man that worked during the 28 day strike.

Q. 58 day strike?

A. Yes, sir.

Mr. Pettus:

We move to exclude that.

Q. That was in the early part of 1955?

A. Yes, sir.

Mr. Pettus:

We move to exclude the answer on the same ground.

The Court:

Do what?

Mr. Pettus:

Move to exclude his answer on the same ground.

Q. He was the man who worked during the 58 day strike here last year?

The Court:
Overruled.

Mr. Pettus:
We except.

A. Yes, sir.

Mr. Simpson:
All right.

Q. Now then, at the time Byram said that, use his exact language, please, sir, if you haven't already done so. If it is profane, use profanity, whatever it is, use his exact language.

Mr. Pettus:
We object to that as repetition. He just said what Byram said.

Mr. Simpson:
It may not be repetition.

The Court:
Overruled.

Mr. Pettus:
We except.

A. Well, what Byram said was, Byram didn't use any much profanity at that time himself. I mean Byram, he didn't say anything. All he told me was

that if I did, I would be placed in a class like I said, and somebody would take a pot shot at me up the road.

Q. All right. Now then, what did you do after that statement was made to you?

A. After that statement was made to him, I told him—

Q. No, made to you, after that statement was made to you what did you do then Mr. Wilder?

A. After that statement was made to me I told him that we would have to, that we didn't have any strike, and the engineers would have to go if they got a fireman to go with us.

Q. Did you communicate with anybody about that?

A. Yes.

Q. Anybody with the Railroad?

A. Yes. After I done that, why we talked to them and tried to reason with them, I'll say.

Q. That is "we", now who do you mean?

A. Well, myself and Mr. Mackin and—

Q. The engineer?

A. The engineer, yes, sir.

Q. Talked to who?

A. We talked to Byram and Hicks and Dismukes.

Q. These were firemen from Birmingham?

A. Yes, sir, they were all around there, and then the call boy, called Slim, Dismukes was supposed to go with me, and he told the call boy that he had already laid off, and the call boy called Mr. Davidson back and told him that I was ready to go but he would have to get a fireman.

And he told me to hang around, that he would call me back in a few minutes, and let me know what to do.

And in a few minutes, why he called me back then and told me to come on down that he would get me a fireman. And I started on downstairs, or down to the head of the stairs, and just as I got at the head of the stairs why I met Charlie Hartselle, another engineer that is on a passenger run.

Mr. Pettus:
Who is that, Charlie who?

The Witness:
Charlie Hartselle.

Mr. Pettus:
Hartselle?

Mr. Simpson:
Hartselle, H-a-r-t-s-e-l-l-e?

The Witness:
Yes, sir.

Q. All right.

A. And I said, "Mr. Hartselle". I said "You are older than I am". and I said "I want some advice." I said "I am called for a Calara turnaround, and I want to know whether to go or not." He said "Well, Ted, we are not on strike, and we have to protect our rights and our job", and he said "There is not anything for you to do except go on." I said "Well, that's what I thought."

And about that time Mr. Dismukes came up and just stepped in between us and pointed his finger like that (illustrating) at me, and he said "God damn you, I said for you not to go."

So Mr. Hartselle said "Well, Ted", he said "Under the conditions and the way things is, and you have been threatened", he said "I would go back and call Davidson and tell him that you had been threatened, and mark you off sick." and that I did.

Q. Davidson was the one that called the crew?

A. He was the caller then.

Q. You called the caller down there, Mr. Davidson, and told him that you had been threatened?

A. That's right.

Q. And wouldn't go?

A That's right.

Q. Now then, did you see Mr. Dismukes after that, that morning?

A. He was around in the lobby there and was using the telephone around there calling someone.

Q. Do you know who he called?

A. I don't know who he was calling. He was talking to some one about getting a car.

Q About getting a car?

A. Yes, sir, that's right.

Q. An automobile, you mean?

A. An automobile.

Q. Did you hear him make any long-distance call?

A I did not.

Q. Did you hear him make a local call other than to get the automobile?

A. I did not.

Q. Now then, did Dismukes say anything to you about what he proposed to do before he left Montgomery?

A. About what he was supposed to do?

Q. What he proposed or was going to do before he left Montgomery.

A. Well, he was talking around there, and was just turned around, talking to the whole bunch around there, and he walked over and leaned up against the wall, and he said "Well, I'm going to pull the whole God damn bunch out before I leave here."

Q. Before he left Montgomery?

A. Before he left Montgomery.

Q. Going to pull the whole God damn bunch out before he left there?

Mr. Simpson:

You can have the witness.

Cross Examination.

By Mr. Pettus:

Q. When you called up and laid off, what did you tell the man you talked to?

A. I told Mr. Davidson that I had been threatened and mark me off sick.

Q. Did you make the whole statement that you had been threatened, and mark you off sick?

A. I did.

Q. Is that on the book?

A. On the book?

Q. Yes.

A. I don't know.

Q. Do you know whether the book is up here or not?

A. No, I don't.

Q. But you told him to mark you off sick?

A. That's right.

Q. Then what did he say?

A. He said "O. K."

Q. You did not report that day?

A. No, sir.

Q. Do you know whether any trains ran out of there that day?

A. I do not.

Q. Out of Montgomery. After this remark of Mr. Byram's—what was that remark that you said earlier in the game here, you testified about?

A. The one where he said "Take a pot shot."

Q. He said "Somebody", did he?

A. He said somebody may take a pot shot. He said "Don't go. If you do", said "Some one will take a pot shot at you up the road, and you'll be classed in the class with Ralph Graves."

Q. He didn't say who it was or anything?

A. Going to take a pot shot?

Q. He didn't say who was going to take a pot shot?

A. No, sir.

Q. After that conversation with Byram though you were still on your way to go, were you not?

A. That's right.

Q. How long was it after you had the conversation with Byram before you decided not to go?

A. Oh, three or four minutes.

Q. Three or four minutes?

A. Maybe five.

Q. Were you actually on your way out?

A. Yes, sir.

Q. When you talked to Dismukes the last time?

A. Yes, sir.

Q. How many railroad men were in the hotel at that time?

A. You mean in the lobby?

Q. Yes, in the lobby.

A. Well, there was three, and let's see, three, four, five, six, or seven; six of us I know. Let's see,

there was three, myself, Mackin is four, and Brown is six. There was six of us, I know.

Q. Six of you you know?

A. Yes.

Q. How many of them were engineers?

A. Let's see, there was several of them there that was switchmen. Well, there was Mackin and myself and Whitney at that time. Of course, I met Mr. Hartselle as I started out. He is an engineer.

Q. How many engineers do you say were there now?

A. Well, there was myself, one, and Mackin is two, Whitney is three, and then I met Mr. Hartselle, is four.

Q. Four?

A. There was four of us.

Q. How many firemen were there?

A. There was Hicks, Dismukes, Byram, and Brown off of the south end.

Q. Who was that?

A. Brown.

Q. Brown off of the south end?

A. Yes, sir.

Q. By the "South end" you mean Mobile?

A. That is the Mobile Division.

Q. The Mobile Division?

A. South of Montgomery.

Q. Did you do any work on that Tuesday?

A. No, sir.

Q. You didn't do any work on Tuesday?

A. No, sir.

Q. You laid off sick?

A. I laid off sick and came home on the bus.

Q. Did you do any work Wednesday?

A. Let's see, Wednesday.

Q. The following Wednesday?

A. I don't know whether I was called on that Wednesday or not, because I was back here Wednesday. I don't remember whether I got out of here.

Q. Do you know when the walkout was over?

A. The walkout was over, they went back to work Wednesday I think, didn't they?

Q. Well, I am asking you. You are the man that is testifying. Is that your recollection that they went back Wednesday?

A. I wasn't paying much attention because I was at home. I think it is Wednesday when they went back, Wednesday night, I think is when it was.

Q. When you got back Wednesday—were you a member of the Firemen's Organization?

A. I came back Tuesday.

Q. You came back Tuesday?

A. Yes.

Q. You spent the night at home?

A. That's right.

Q. Did you spend Wednesday at home?

A. That's right.

Q. What organization are you a member of?

A. Engineers.

Q. Brotherhood of Railroad Engineers?

A. That's right.

Q. In other words, that is a Union just like the Firemen's Union?

A. The Firemen, that's right.

Q. Is that right?

A. That's right.

Q. When you came back to Birmingham Tuesday night did you talk to any of the L&N lawyers about what had occurred at Montgomery?

A. No, sir.

Q. Did you talk to any of the L&N Claim Agents?
A. No, sir.
Q. Did you talk to Mr. Robey, the ex-FBI man?
A. No, sir.
Q. He hadn't been employed by them at that time, had he, by the L&N?
A. I don't know.
Q. You don't know about that?
A. No.
Q. Did you talk to Mr. Laney about it?
A. I won't say, because I don't recall talking to him.
Q. You won't say you didn't?
A. I won't say I did or I won't say I didn't.
Q. When was the first time you talked to Mr. Laney about it?
A. I don' tknow.
Q. You don't know?
A. I don't remember.
Q. Did you talk to him that week about it?
A. I don't remember.
Q. Have you been paid for that day that you laid off sick?
A. No, sir.
Q. That Tuesday?
A. No, sir.
Q. Have you been paid by the Railroad?
A. No, sir.
Q. You have never been paid by the Railroad?
A. No, I haven't been paid for it.
Q. Did you get paid for Wednesday?
A. If I worked I did; if I didn't, I didn't get paid.
Q. Do you recall whether you worked or not?
A. No, I don't.
Q. You don't recall whether you did or not?

A. No, I don't.

Q. According to your recollection you may have worked on Wednesday?

A. I might have got out that night, I don't remember.

Q. You just won't say whether you did or not?

A. No, sir.

Mr. Pettus:

All right, that's all.

Re-Direct Examination.

By Mr. Simpson:

Q. He asked you about talking to Mr. Laney. Who is Mr. Laney?

A. He was Local Chairman for the Engineers.

Q. Your Local Chairman?

A. Yes, sir.

Q. Of your Union?

A. Yes, sir.

Mr. Simpson:

That's all. Come down. Call Mr. Brown. May Mr. Wilder be excused, Your Honor?

The Court:

Yes, you may be excused unless there is objection.

Mr. Pettus:

We will excuse him.

(Witness excused.)

THOMAS C. BROWN, SR., called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:

Q. Is this Mr. Thomas C. Brown, Sr.?

A. Yes, sir.

Q. Where do you live, Mr. Brown?

A. Evergreen, Alabama.

Q. How far south of Montgomery is Evergreen?

A. About 80 miles.

Q. Who do you work for?

A. Louisville & Nashville.

Q. How long have you been working for the L&N?

A. 14 years and 10 months.

Q. What do you do for them?

A. Extra conductor, and trainman.

Q. Do you belong to either of the Brotherhoods?

A. Yes, sir, Brotherhood of Railroad Trainmen.

Q. Brotherhood of Railroad Trainmen?

A. Yes, sir.

Q. Have you held any office in that Brotherhood?

A. No, sir.

Q. Do you remember where you were on Monday, I mean on Tuesday, October 25, 1955? To fix that date in your mind, that is during the period there was a strike or work stoppage here in Birmingham on the L&N Railroad?

A. Yes, sir.

Q. Where were you on Tuesday morning of that work stoppage?

A. I arrived in Montgomery from Mobile at approximately 5:00 o'clock.

Q 5 o'clock a. m.?

A. Yes, sir.

Q. 5:00 o'clock a. m. on Tuesday?

A. Yes, sir.

Q. What run did you have?

A. Well, it is a run we call the House Freight Run.

Q. What was your work?

A. I had worked the night before from Mobile.

Q. What were you doing on that run?

A. A brakeman.

Q. As a brakeman?

A. Yes, sir.

Q. Now, about what time did you get off duty there in Montgomery Tuesday morning?

A. About 5:00 o'clock the best I can remember.

Q. Where did you go?

A. I went to my room.

Q. Where was your room?

A. Gary Hotel.

Q. At the Gary Hotel?

A. Yes, sir.

Q. That is sort of a stopping place for the railroad men, isn't it?

A. More or less, yes, sir.

Q. About what time did you get up to the hotel?

A. Between 5:30 and 6:00 o'clock.

Q. Who did you see when you got up there in the lobby that you knew?

Mr. Pettus:

We object to this on the ground none of these Defendants here on trial were involved in any incident that occurred in Montgomery.

The Court:
I presume he is going to connect it up.

Mr. Simpson:
Mr. Dismukes and these gentlemen were all part of the firemen's movement, Your Honor, yes, sir.

The Court
Overruled.

Mr. Pettus:
We except.

Q. Can you tell us that?
A. Well, I think—I saw Mr. Moore.
Q. All right.
A. He is an engineer from Birmingham.
Q. A Mr. Moore?
A. Yes, sir.
Q. All right.
A. I saw Mr. Wilder, also an engineer from Birmingham.
Q. Is that the gentleman that just left the stand here?
A. Yes, sir.
Q. All right, sir.
A. I saw Mr. Hartselle, an engineer from Birmingham.
Q. Anybody else?
A. I saw Mr. Dismukes.
Q. All right.
A. A fireman from Birmingham, and several other railroad men that I did not know by name.
Q. All right. Now, did you hear any conversation by Mr. Dismukes while you were there in the lobby that morning?

A. Well, yes, sir.

Q. Did you hear any statements made by Mr. Dismukes?

A. There was general discussion.

Q. Just tell us what occurred there in the lobby that morning.

A. There was a general discussion about the strike that had been pulled in Birmingham.

Mr. Pettus:

We want to object to the conversation on the ground that none of the Defendants here were present at that time.

The Court:

Overruled.

Mr. Pettus:

We except.

A. And I understood that all of the firemen that were in Montgomery from Birmingham at that time had laid off.

Q. All right.

A. Shortly after I got there a call boy came from the shop, colored call boy, by the name of Webb, came upstairs and called Mr. Wilder for a Calera turn, and he accepted the call. And he went to the telephone and called the chief caller and told him that he accepted the call, under the conditions if he had a qualified fireman, that he wouldn't go with just anybody. And I guess—I didn't hear Mr. Davidson's words, but I guess that he said—

Mr. Pettus:
We object to what he said.

Mr. Simpson:
You can't give us what he said.

The Court:
I sustain the objection.

A. Well, anyway he said he would accept the call.
Q. He said he would accept the call?
A. Yes, sir.
Q. Mr. Wilder has already told us what Mr. Davidson said.
A. After he accepted this call, Mr. Dismukes asked him, says "Wilder, don't go."
Q. Mr. Dismukes said that to Wilder?
A. Yes, sir, he says "Dismukes, I've got to go or quit my job", he says "Well, by God I says don't go." Well, he says "I've got to go", says "You boys haven't got a picket line over there, the boys here at Montgomery are working", and says "I've got to go or resign."

So he walked to the foot of the stairs and had a conversation with Mr. Hartselle and I believe Mr. Moore. During their conversation they called me up there and Mr. Wilder asked me what would I do in the case. I told him, I says "Well, Ted, the only thing you can do is to go." I says "We haven't struck down here", I says "There's no picket line over there to keep you from going", I says "You have either got to go or quit."

So he told Dismukes that he would have to go, and this other fellow, I couldn't tell you his name, because I didn't know him—

Q. He was one of these Birmingham firemen?

A. One of these Birmingham firemen.

Q. Yes, sir.

A. He said "Well, God damn you, go; somebody will take a pot shot at you before you get back."

Mr. Wilder shortly went to the telephone and called Mr. Davidson, the chief caller, and told him that his life had been threatened, and he was afraid to go, to lay him off sick.

Then after he done that, Mr. Dismukes says "Well, by God, its time to close down Montgomery, I'll call Ed Kelly and see if he can furnish me some men." Mr. Kelly is Local Chairman for the firemen.

Q. At Montgomery?

A. Yes, sir, on the M&M Division, "And see if he can furnish me six or eight men to help me close down Montgomery."

He did call. Whoever he called I don't know, but he said "Ed I want six or eight men I can depend on, I'm closing down Montgomery." What Ed said, or who he was talking to, I do not know. Anyway, shortly after that they left, three of these firemen, Mr. Dismukes and two others, and that's the last of the conversation that I heard.

Q. All right. Now then before he left did you hear him put in any long-distance call?

A. Yes, sir, before he left he put in three or four calls to Birmingham.

Q. Did you hear his end of this Birmingham call, those Birmingham calls?

A. Yes, sir.

Q. What did he say to Birmingham?

A. He told whoever he was talking to that he needed some men in Montgomery.

Mr. Pettus:
We object to that, may it please the Court, incompetent, irrelevant, and immaterial.

The Court:
Overruled.

Mr. Pettus:
The party on the other end of the line not identified, hearsay, not binding on the Defendants in this case.

The Court:
Is that what he heard him say over the telephone?

Mr. Simpson:
Yes, sir.

The Court:
Overruled.

Mr. Pettus:
We except.

A. He said he needed six to eight men there, he was fixing to close down Montgomery and he wanted some men to help him.

Mr. Pettus:
We move to exclude that answer on the same ground.

The Court:
Overruled.

Q. About what time did they walk out of the hotel, that is Mr. Dismukes and the other two firemen from Birmingham?

A. I guess it was between,—approximately 7:00 o'clock.

Mr. Simpson:

You can have the witness.

Cross Examination.

By Mr. Pettus:

Q. Mr. Brown, you have discussed your testimony with a number of people, haven't you?

A. Not too many, no, sir.

Q. Well, several, haven't you?

A. Well, I wouldn't say several, no, sir.

Q. Well, you did, right after it happened, you discussed it with some one, didn't you?

A. Why I don't recall, no, sir.

Q. Have you discussed it with Mr. Wilder?

A. Yes, sir, I have.

Q. Been over it with him several times, have you?

A. Not over once or twice.

Q. Not over once or twice?

A. No, sir.

Q. Have you been over it with anybody else?

A. No, sir.

Q. How about Mr. Robey, the FBI man, ex-FBI man, have you been over it with him?

A. No, sir.

Q. You know him, don't you?

A. Yes, sir.

Q. You have been over it several times with him, haven't you?

A. No, sir. I have been over it one time with him. He came to Montgomery and interviewed me.

Q. He interviewed you at Montgomery?

A. Yes, sir.

Q. You have been over it one time with him?

A. Yes, sir.

Q. Are you working for the L&N Railroad now?

A. Yes, sir.

Q. That is the L&N you are working for?

A. Yes, sir.

Q. Were you paid for this entire time down there that you testified about, Tuesday and Wednesday, down at Montgomery?

A. No, sir.

Q. Did you receive your pay?

A. No, sir.

Q. You haven't received that?

A. Not as yet.

Q. You expect to receive it, do you?

A. Yes, sir.

Q. It has been promised to you?

A. That is in our agreement between the Brotherhood of Railroad Trainmen and the L&N Railroad that we will receive pay for interviews concerning Court procedures.

The Court:

You were talking about the time he was off?

Mr. Pettus:

Yes.

Q. I was talking about the time you were off there in Montgomery.

A. That was my off day, yes, sir.

Q. That was your off day?

A. Yes, sir.

Q. Now, are you positive that somebody down there on this occasion at the Gary Hotel told Mr. Wilder that some one was going to take a pot shot at him?

A. Sir?

Q. Was that statement made?

A. Ask that question again, please, sir.

Q. Are you positive that somebody at the Gary Hotel told Mr. Wilder that somebody was going to take a pot shot at him?

A. Yes, sir.

Q. If he made that run?

A. Yes, sir.

Q. And it was right after that that he went to the phone and laid off?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. You are absolutely positive about that?

A. I am positive.

Q. It was right after that statement?

A. Yes, sir.

Q. Now, as a matter of fact, who made that statement to him?

A. I couldn't call the man by name.

Q. Well, it wasn't Dismukes, was it?

A. No, sir.

Q. Don't you know that after that statement was made, about the pot shot, that Mr. Wilder stayed around and discussed it further with them, and stayed there 10 or 15 minutes before he made any call?

A. No, sir. No, sir, he did not.

Q. He did not?

A. No, sir.

Mr. Pettus:
All right, that's all.

Mr. Simpson:
Come down, Mr. Brown. Thank you, sir. May Mr. Brown be excused?

The Court:
He may be excused unless there is objection.

Mr. Pettus:
We excuse him.

(Witness excused.)

Mr. Simpson:
Call Mr. Kelly.

EDDIE B. KELLY, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:
Q. Will you state your name to the Court and jury, please, sir, Mr. Kelly?
A. My name is Eddie Boyd Kelly, who resides at 324 East Patton.
Q. East what?
A. Patton, Montgomery, Alabama.
Q. P-a-t-t-o-n?
A. Right.
Q. Who do you work for, Mr. Kelly?

A. I work for the L&N Railroad.

Q. In what capacity?

A. Locomotive fireman on the M&M Division.

Q. That is south of Montgomery?

A. South of Montgomery.

Q. How long have you worked for the L&N?

A. 14 years last May.

Q. Are you amember of the Firemen's Union?

A. I am, sir.

Q. That is the Brotherhood of Locomotive Firemen and Enginemen?

A. Yes, sir.

Q. Do you hold an office in the Firemen's Organization?

A. Yes, sir, I do.

Q. What are you?

A. Local Chairman.

Q. You are Local Chairman of the Seniority District there on the M&M Division?

A. Yes, sir.

Q. And were you that in October, of last year?

A. Yes, sir.

Q. I believe that is the same office that Mr. Otts over here holds in Birmingham on the main line Seniority District here?

A. Yes, sir.

Q. In the same Union?

A. Yes, sir.

Q. All right. Now then, did you, or were you in Montgomery on the morning of Tuesday, of this Birmingham strike?

A. I was.

Q. Where were you?

A. I was at home.

Q. Now, there has been evidence here that a telephone call was made to you, Mr. Kelly.

Mr. Pettus:
We object to that, as to the statement of what the evidence is, may it please the Court.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. We have heard only one end of a conversation. Now, did you receive a telephone call that morning?
A. Yes, sir.

Mr. Pettus:
We object to that as incompetent, irrelevant, and immaterial.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Did the man who called you tell who he was?
A. No, sir.
Q. Will you tell us about what time of the morning that occurred?
A. It was around 8:00 o'clock of Tuesday morning on the 24th I believe it was,—25th.
Q. Tuesday morning, whether the 24th or 25th?
A. Yes, sir.
Q. We all get confused on the day of the month?
A. That was on Tuesday morning.

Q. Tuesday morning?
A. Yes, sir.
Q. What did this caller say to you?

Mr. Pettus:
We object to that as incompetent, irrelevant, and immaterial.

The Court:
Is this the gentleman, is Mr. Dismukes supposed to have called this witness?

Mr. Simpson:
Yes, sir.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Go ahead and tell what this conversation was.
A. The party who was calling did not identify himself. I asked that he give his name, and he declined to do so. He asked for three or four or five men I believe it was to assist him. I told him I didn't have any.
Q. To assist him for what?
A. To close the shop up, I presume.

Mr. Pettus:
We object to what he presumes.

Q. You can't presume.
A. All right.

Q. You understood what he wanted the men for, didn't you?

A. Yes, sir.

Q. All right, you just tell the jury what he asked you for.

A. He asked me for four or five or six men.

Q. Five or six men?

A. To assist him in closing up the shop.

Q. Did he say anything about men he could depend on or anything of that kind?

A. Well, I—

Mr. Pettus:

We object to leading the witness.

Mr. Simpson:

I admit it is a little leading.

The Court:

I sustain the objection.

Mr. Simpson:

But I am trying to save time.

A. I believe that is correct, yes, sir.

Q. Is that your best recollection about it, Mr. Kelly?

A. Yes, sir.

Q. Now then, after that conversation did you put in a long-distance telephone call?

A. After a number of calls, after I received a number of calls from the members of my Lodge I called the General Chairman at Louisville.

Q. That is the Firemen's General Chairman?

A. Yes, sir.

Q. What is his name?
A. Jake Paschal.
Q. Jake Paschal?
A. Yes, sir.
Q. And he lives in Louisville?
A. Yes, sir.
Q. And he is the man that you report to?
A. Yes, sir.
Q. He is the man immediately over you on the L&N System?
A. Yes, sir.
Q. In the Brotherhood Organization?
A. Yes, sir.
Q. All right. Now then, did you discuss this work stoppage or strike with Mr. Paschal?
A. Yes, sir, I asked him about it.

Mr. Pettus:
We object to that. It is hearsay, incompetent, irrelevant, and immaterial.

The Court:
I sustain the objection to that question.

Mr. Simpson:
I want to ask him, may it please the Court, what Mr. Paschal stated, whether or not this was a legal or illegal work stoppage.

Mr. Pettus:
We object to any conversation with some third party. That is under the hearsay Rule if anything ever was.

The Court:
I sustain the objection to that.

Q. About what time of day did you call Mr. Paschal?

Mr. Pettus:
We object to that. The Court has just sustained the objection.

Mr. Simpson:
I want to fix the time.

The Court:
You are not going into the conversation?

Mr. Simpson:
No, sir.

The Court:
I overrule the objection.

Q. The Court says you may answer.

Mr. Pettus:
We except.

A. Well, I would say it was around possibly 8:15 or 8:30.
Q. 8:15 or 8:30?
A. Yes, sir.
Q. In the morning?
A. Yes, sir, that is the first time I called.
Q. You called him again?
A. Yes, sir.

Q. Did you call him twice?

A. Yes, sir.

Q. All right. Now then, you say you received a good many calls from firemen there in Montgomery?

A. Yes, sir.

Q. Wanting to know what to do?

A. Yes, sir.

Q. Did you instruct the men of your Local down there to come out?

Mr. Pettus:

We object to that.

A. No, sir.

The Court:

I sustain the objection.

Q. Did you instruct any men that was a member of any Firemen's Organization to decline to work at that time?

A. No, sir.

Mr. Pettus:

We object to that, incompetent, irrelevant, and immaterial.

Q. In Birmingham or Montgomery?

The Court:

I sustain the objection.

Mr. Simpson:

You can have the witness,

Cross Examination.

By Mr. Pettus:
Q. Mr. Kelly, you did not supply this anonymous caller with five or six men, did you?

A. No, sir, I did not.

Mr. Pettus:
That's all. Thank you.

Mr. Simpson:
Tell Earl Webb to come in.

Mr. Pettus:
You are excused so far as we are concerned.

The Court:
This man may be excused.

(Witness excused.)

Mr. Simpson:
Tell Earl Webb, a colored man, to come in.

EARL WEBB, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:
Q. Is this Earl Webb?
A. Yes, sir.
Q. You are retired now, aren't you, Earl?

A. Yes, sir.
Q. When did you retire?
A. The 10th day of July, '56.
Q. 10th day of July, this year?
A. Yes, sir.
Q. Where do you live?
A. 1500 South Holt Street, Montgomery.
Q. You are going to have to talk a little louder, Earl.
A. 1500 South Holt Street.
Q. In Montgomery, Alabama?
A. Montgomery, yes, sir.
Q. Before you retired who did you work for?
A. The L&N Railroad.
Q. How long did you work for the L&N?
A. 38 years and some months I think.
Q. Just before you retired what job did you have?
A. Caller and messenger boy, two of them.
Q. Caller, messenger?
A. Yes, sir.
Q. You assisted Mr. Davidson down there, the caller, the man who did the calling, did you?
A. Yes, sir
Q. You know Mr. Davidson?
A. Oh, yes, I know him.
Q. How long did you work there under him?
A. I worked with him I think from about '33.
Q. From 1933 up to the time you retired?
A. Yes, sir.
Q. Do you recall when this strike occurred last October, Earl, here on the L&N System at Birmingham?
A. Yes, sir.
Q. Were you on duty there any that week?
A. Yes, sir, I was on duty.

Q. Do you remember what time the men in Montgomery quit, the work stoppage in Montgomery?

A. No, sir.

Q. Was it Monday, Tuesday, or Sunday, or do you remember what day of the week it was?

A. No, sir, I don't believe I remember the date.

Q. You don't remember the date?

A. No, sir.

Q. Well, do you remember the day of the week?

A. It was on a Tuesday I believe.

Q. You think it was on a Tuesday?

A. Yes, sir.

Q. Were you on duty that Tuesday morning?

A. Yes, sir.

Q. Did you have any duty to deliver any message to anybody that morning?

A. No, sir, I hadn't. I just was fixing to go out to the stock yard.

Q. To the stock yard?

A. Yes, sir.

Q. Did you call anybody to come to work that morning?

A. No, sir, I didn't call anyone.

Q. You didn't call anybody?

A. No, sir.

Q. Were you in the call office when the calling, and so on, stopped there?

A. Yes, sir.

Q. Tell the jury what was done, what happened when that occurred.

A. The time it occurred that morning?

Q. About what time of the mo. ing did it occur?

A. Well, it was around between 7:30 and 8:00 o'clock.

Q. Between 7:30 and 8:00 o'clock?

A. Yes, sir.

Q. Tell the jury, Earl, what happened.

A. I was sitting down at the table on one side and Mr. Davidson on the other side, and this fireman, Dismukes, come in and says "Let's close this joint up."

Q. "Let's close this joint up"?

A. "And get out."

Q. "And get out"?

A. Yes, sir.

Q. What did you do?

A. Nothing.

Q. Did you say anything back to him?

A. No, sir, I didn't open my mouth.

Q. Did Mr. Davidson say anything?

A. Well, he said "Let me get my books and finish calling the crew", and he told him that would be all right, just to get out.

Q. Just to get out?

A. Yes, sir.

Q. All right. What else did he say about his books? What did Mr. Davidson say about it?

A. He just told him just to leave them alone, "I ain't going to bother them."

Q. "Leave your books alone"?

A. Yes, sir.

Q. Did he say anything about what had happened to his books one time before that?

Mr. Pettus:

I object to leading the witness, Your Honor.

A. He said they done away with them.

The Court:
I sustain the objection.

Q. Anyway, he wanted to take his books with him?
A. Yes, sir.
Q. And he said "Just get out now"?
A. Yes, sir.
Q. Did Mr. Davidson go out?
A. Yes, sir, he come out too.
Q. Did you go out?
A. Yes, sir, I went out.
Q. Were you scared?
A. Oh, no, I wasn't scared.

Mr. Pettus:
We object to that—that's all right, we withdraw our objection.

The Court:
I sustain the objection.

Mr. Simpson:
What was that?

A. Sir?
Q. You say you were not scared?
A. I wasn't afraid.
Q. You had about lived up your life, hadn't you?
A. Yes, sir, I was ready to go anyhow.
Q. What?
A. I was about ready to go anyway.

Mr. Simpson:
You can have the witness.

Mr. Pettus:
That's all, Earl. Come down.

Mr. Simpson:
That's all, Earl.
The Court:
He will be excused unless there is objection.

Mr. Pettus:
No objection.

(Witness excused.)

Mr. Simpson:
Tell Mr. Davidson to come in, please.

HUGH C. DAVIDSON, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:
Q. Is this Mr. Hugh C. Davidson?
A. Yes, sir.
Q. Where do you live?
A. In Montgomery.
Q. In Montgomery?
A. 404 South Perry.
Q. What is your business?
A. Chief caller with the L&N.
Q. How long have you been employed by the L&N Railroad?
A. Since 1916.

Q. 1916?
A. Yes, sir.
Q. 40 years?
A. Since 1916.
Q. And do you call train crews there at Montgomery?
A. Yes, sir.
Q. I believe your helper was, up until the time he retired, was Earl Webb, wasn't it?
A. Yes, sir.
Q. Do you belong to a Railroad Union?
A. Yes, sir, I do.
Q. Which one?
A. Brotherhood of Railway Clerks.
Q. The Clerks?
A. Yes, sir.
Q. Were you on duty on Tuesday of this work stoppage or strike last October?
A. Yes, sir.
Q. Did you have any conversation with Mr. Dismukes that morning—I don't mean Mr. Dismukes, we will get to that later. I mean with Mr. Wilder by telephone that morning?
A. Yes, sir.
Q. You did?
A. Yes, sir, we contacted every one in Montgomery and tried to get them to go out.
Q. Yes, sir. Did you talk to Mr. Wilder?
A. Yes, sir.
Q. Did he accept the call?
A. Yes, sir, he accepted the call.
Q. Did he later call you again?
A. Yes, sir, he later called back and laid off.
Q. And laid off?
A. Yes, sir.

Q. Do you know where he was calling from or anything about that?

A. Well, no, sir, I couldn't tell you that. I imagine it was where he stayed, at the rooming place.

Q. All right. Now, after Mr. Wilder had laid off, do you recall whether or not you saw Mr. Dismukes, Mr. Byram, and Mr. Hicks, three firemen from Birmingham?

A. I saw Mr. Dismukes. I don't know about the others. I didn't see them.

Q. You didn't see them?

A. No, sir.

Q. Where did you see Mr. Dismukes?

A. Mr. Dismukes came in the office about 8:30 that morning.

Q. What did he say or do when he cme in?

A. Well, he came in there and told us to "Let's get out and close up this office", which I did.

Q. You got out?

A. Yes, sir.

Q. Did you ask him to let you do anything before you got out?

A. Yes, sir, I asked him to let me finish calling No. 37.

Q. You mean the crew for 37?

A. The crew for 37, yes, sir.

Q. What did he say?

A. He says "Well, how many do you lack?" I told him only two. He says "Well, let's go."

Q. "Let's go"?

A. Yes, sir.

Q. Did you say anything to him about anything else that was there in the office that you wanted to do before you left?

A. Yes, sir.

Q. If so, what?

Mr. Pettus:
We object.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Just tell us your conversation.

A. Well, I started picking up the books, and asked him how about taking the books, that on the other occasion—

Mr. Pettus:
We object to that as a voluntary statement.

Q. Just say what you said.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Go ahead.

The Court:
State what you said.

The Witness:
Sir?

The Court:
Just state what you said and what he said.

A. I asked about taking the books, our record books there, and he told me to leave them there, that they would be all right.
Q. Just leave it there?
A. Yes, sir.
Q. And get out?
A. Yes, sir.
Q. And you got out, did you?
A. Yes, sir.
Q. Were you afraid, scared?

Mr. Pettus:
We object to that.

Q. To work?

The Court:
Overruled.

Mr. Pettus:
Incompetent, irrelevant, and immaterial. We except.

A. Sir.

The Court:
You can answer the question.

A. No, sir, I wasn't afraid, but I didn't like the idea of staying there.
Q. You didn't like the idea of staying there?
A. No, sir.

Q. So you left?
A. Yes, sir.

Mr. Simpson:
All right. You may have the witness.

Cross Examination.

By Mr. Pettus:
Q. Your books were all right when you got back there, weren't they, Mr. Davidson?
A. Yes, sir.

Mr. Pettus:
All right. That's all. Come down.

Mr. Simpson:
That's all.

The Court:
The witness may be excused unless there is objection. You may be excused from further service.

The Witness:
Thank you.

The Court:
Further attendance.

(Witness excused.)

Mr. Simpson:
Call Mr. Pritchett.

J. P. PRITCHETT, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Simpson:

Q. Is this Mr. J. P. Pritchett?

A. Yes, sir.

Q. Where do you live?

A. Montgomery.

Q. Who do you work for?

A. I work for the L&N Railroad.

Q. How long have you worked for the L&N?

A. Since June, 1942.

Q. June, 1942?

A. Yes, sir

Q. In what capacity did you enter the service of the L&N?

A. As a clerk.

Q. What are you now?

A. General Yard Master.

Q. What job do you now hold?

A. I am the General Yardmaster.

Q. You are the General Yardmaster at what place?

A. At Montgomery.

Q. At Montgomery?

A. Yes, sir.

Q. Were you on duty on Tuesday of the work stoppage that happened here last October on the L&N?

A. Yes, sir.

Q. Where is your office with reference to the call office?

A. My office is in the Yard Office. I would say a distance of about a half mile.

Q. Which is closest to town the call office or your office?

A. About the same.

Q. Or the Yard Office?

A. About the same distance. In other words, it is about as far from the caller's office to the Yard Office as it is from the caller's office to the Union Station.

The Court:

Speak up louder so they can hear you and the Court Reporter can get your answers.

The Witness:

Yes, sir.

Q. Did you have anything unusual happen there in your presence, in your office? You are not in the same office with Mr. Davidson?

A. No, sir.

Q. He was in the—what do you call the office he is in?

A. He is in the caller's office, chief caller's office.

Q. Well, I know, but where?

A. At the shop.

Q. At the shop?

A. Yes, sir.

Q. You were in the Yard?

A. Yes, sir.

Q. Now, we have heard evidence about the shop, and what happened at the caller's office. Just tell us if something happened out at the Yard Office that morning, out at your office?

A. Somewhere around 8:30—this was on Tuesday morning?

Q. Yes, sir.

A. Work was going on as normal, and we had three men to enter the Yard Office. And I was at my desk, which is over on one side of the office. And they began to circle around the center of the office, making remarks to the clerks that were on duty in this office, to "Get out", that they was going to close the place down.

Q. To "Get out"?

A. Yes, sir.

Q. Now, do you know who those men were, those three men that were in there circulating around?

A. I knew one of them. He was Mr. Dismukes, a fireman on the South and North Division.

Q. Mr. Dismukes?

A. Yes, sir.

Q. Did you personally know the other two men who were with him?

A. No, sir, I didn't know the other two men that was with him, personally.

Q. Did you see them circulate around in the office there together?

A. The best I recall Mr. Dismukes was the leader and the spokesman for the three. And so far as any remarks made by anybody other than Mr. Dismukes, I didn't hear them.

Q. You did not hear them?

A. No, sir.

Q. All right. Now then, did they, after they had circulated around there, did they stay or leave?

A. They made about three trips around, inside of the Yard Office, and then they left the Yard Office, the main part of the office, and moved over to the

operator's office, which is located in the same building, and then they left the Yard Office.

Q. Then they left the Yard Office?

A. Yes, sir.

Q. All right. Did your men stay at work or did they leave?

A. Well, just as soon as they left—

Q. The men there in your office?

A. Just as soon as the three fellows left, my men in the Yard Office began to gather around my desk, seeking advice as to what to do. They felt it unsafe to stay inside and work.

Mr. Pettus:

We object.

The Court:

I sustain the objection.

Q. Did they say anything about how they felt?

A. Yes, sir, they just said that they were afraid to stay in there and work.

Q. All right. Now then, when they said that to you, what did you all do?

A. Well, I told them—

Q. What did you tell them?

A. I unstructed them to get off the Company property until I could get somebody, some help or police protection or something, and get these men away from the inside, or away from the premises, where there wouldn't be any further disturbance.

Q. All right. Did you see those three men or either one of them talking to anybody else around there?

A. No, sir, I do not remember, I didn't see them have any personal, any conversation with them, other than I just heard the remarks made which were made in a loud tone of voice.

Q. "Let's get out of the office"?

A. Yes, sir.

Q. When they left that office, did you see where they went?

A. Yes, sir.

Q. Tell us about that.

A. When we started to leave, or started to leave the Yard Office, I noticed that they had one of my switch engines stopped with a cut of cars, and he was in the process of switching a cut of cars at the south end of what we call the North Yard.

Q. Yes, sir.

A. And they had this switching crew stopped.

Mr. Pettus:

We object to that as a conclusion.

The Court:

I didn't get his answer to that.

Q. Go ahead and tell what you saw.

The Court:

I exclude that.

Q. Go ahead and tell what you saw up there.

A. All right.

Q. Was the switch engine moving or standing when you saw it?

A. He was standing still.

Q. Was one of these men there present, there where the switch engine was?

A. Yes, sir.

Q. Had the switch engine been moving?

A. The switch engine had been moving. He was in the process of switching up a train.

Q. All right, making up a train?

A. Yes, sir.

Q. Was one of these men near that switch engine?

A. Yes, sir.

Q. Where was he?

A. He was located just about even with the switch engine.

Q. Just about even with the switch engine?

A. Yes, sir.

Q. How far was that from where you were?

A. I would estimate it, the amount of feet, I would say about 300,—300 yards.

Q. About 300 yards?

A. Yes, sir.

Q. Up north of you in the yard?

A. Yes, sir, north, in the yard.

Q. You, of course, could not hear the conversation?

A. No, sir.

Q. What did your crew do, on that switch engine?

A. They done as the clerks in the Yard Office. They, or the foreman of the crew contacted me as I was going across the tracks. In other words, he just walked on down and met me and asked me for advice, what to do. He said they didn't feel like it was safe, and wanted to know what to do with the cut of cars that he had hold of, leave it where it was or put it in the clear. And we had them to put the cut

of cars in the clear and get off the Company property as we had instructed the rest.

Q. Did they then leave the Company property?

A. Yes, sir.

Q. That crew?

A. Yes, sir.

Q. Did you see either of these three men anywhere else on the property that morning?

A. Yes, sir, as they left, after they left the switch engine, they come down by what we call the South and North Caboose Track. There were several South and North cabooses on this track and they walked down by this caboose track.

Q. Did they stop or engage anybody in conversation there?

A. Yes, sir, I would say—I couldn't say for sure now that they—

Mr. Pettus:

Q. What did you see them do, what did they do?

A. We just saw them walk along the side of these cabooses and turn back, turn their heads back and forth towards the direction of the men standing on the platform of the cabooses.

Q. Could you tell which one of the three, or were they altogether, that were doing that job?

A. All three were together, but Mr. Dismukes seemed to be turning his head.

Q. He was the one that was apparently talking?

A. Yes, sir.

Q. All right. How long was it before Montgomery got back to work?

A. We went back to work about 9:00 o'clock on Wednesday night, October 25.

Q. This happened on Tuesday, the 25th?
A. Right.
Q. You were down from the time this happened on the morning of the 25th until Wednesday night?
A. Yes, sir.
Q. The next night about 9:00 o'clock?
A. Yes, sir.

Mr. Simpson:
You can have the witness.

Cross Examination.

By Mr. Pettus:
Q. What is your title?
A. General Yardmaster.
Q. How long have you been at Montgomery?
A. You mean in the L&N employment?
Q. In the employment, yes.
A. Since June 2, 1942.
Q. You have been there the whole time, have you?
A. Yes, sir.
Q. This switch engine that you mentioned, when you first noticed that, and these men that you say were there with it, that was about 300 yards away?
A. Yes, sir.
Q. From where you were standing?
A. Yes, sir.
Q. You didn't hear any of the conversation that went on between them there, did you?
A. No, sir.
Q. If any went on?
A. No, sir.

Q. After you first saw the engine there and saw the men up there, was there any movement of the engine after that?

A. No, sir.

Q. No movement?

A. No, sir.

Q. It just stopped right there, did it?

A. Yes, sir.

Q. Everybody just walked out peaceably there, didn't they?

A. Yes, sir.

Mr. Pettus:
That's all.

Mr. Simpson:
That's all, Mr. Pritchett.

The Court:
Is there any further use for this witness?

Mr. Simpson:
No, sir. We would like for him to be excused.

Mr. Pettus:
He is excused.

The Court:
You are excused, Mr. Pritchett.

(Witness excused.)

Mr. Simpson:
May it please the Court, we expected a little more cross examination of these witnesses than these

gentlemen have seen fit to give them, and consequently I am going to now offer some parts of these depositions, if I may.

The Court:
All right.

Mr. Simpson:
And read them.

Mr. Pettus:
Will you tell me which ones you are looking at?

Mr. Simpson:
Give me Mr. Letchman. Will you turn to Mr. Letchman at page 10, Mr. Pettus, Mr. Letchman?

Mr. Pettus:
Yes.

Mr. Simpson:
Beginning on page 10 of his deposition with the question "All you knew when you went over there", and ending the third line from the bottom with the answer "Yes, sir, anything within reason."
I would like to read that part of that deposition, Your Honor.

The Court:
All right, proceed.

Mr. Simpson:
Will the Court instruct the jury as to what this is?

The Court:
All right, proceed.

The Court:
Gentlemen, these are pretrial depositions taken of the Defendants in this case.

Mr. Taylor:
Where did that question end?

Mr. Simpson:
As soon as the Court has finished.

Mr. Taylor:
Oh, excuse me.

The Court:
These are what is known as pretrial depositions taken by the Plaintiff, taken before the trial of this case, of course, of the Defendant. And he is going to read parts of these depositions.

Of course, the other side can read other parts of the depositions if they wish to.

Mr. Pettus:
If the Court please, give us an opportunity to see if we have any objections there. I don't know that we will but I would like to just see what he is going to read.

Mr. Taylor:
What is the starting point and ending point?

Mr. Simpson:
"Yes, sir, anything within reason" on that same page.

The Court:
Go ahead.

Mr. Simpson:
Shall I go ahead?

The Court:
Yes.

Mr. Simpson:
Mr. Letchman.

Mr. Pettus:
We would like to object to this mental operation here on the last of the question that he has got, about what was in the man's mind.

The Court:
I don't have the deposition before me, and I can't see what you are talking about.

Mr. Simpson:
We will give the Court the official deposition and I will use my copy.

Mr. Taylor:
Go ahead, and I will state the objection when we get to it.

The Court:
All right.

Mr. Simpson:

Beginning with the words "All you knew", Mr. Letchman was asked this question:

"Q. All you knew when you went over there, you were going to figure out a way to put these people back on the job?

"A. Yes, sir, or try to.

"Q. You were in agreement on that?

"A. Yes, sir.

"Q. You planned to do what you could to help them?

"A. Of course, I had nothing to do with the main line. My seniority is not over there.

"Q. When you went over there you went over there with the idea of doing anything you could do to put them back?"

Mr. Taylor:

If Your Honor please, we object to that question. It calls for a mental operation and conclusion of the witness.

The Court:

I sustain the objection as to that.

Mr. Simpson:

As to which, Your Honor?

The Court:

As to that question.

Mr. Taylor:

The last one you read, Mr. Simpson.

Mr. Simpson:
"When you went over there you went over there with the idea of doing anything you could to put them back to work?"

The Court:
"With the idea", it calls for a plan and so on.

Mr. Taylor:
Did you read the answer to the jury before the Judge sustained the objection?

Mr. Simpson:
I don't know whether I have read that at all or not. I understand the Court is sustaining the objection to that question.

The Court:
Yes.

Mr. Simpson:
We except. We offer to read the answer which the Witness Letchman made at that time.

The Court:
That is on page 10?

Mr. Simpson:
Yes, sir. Now then, on page 13 is a little part there that I also want to read, beginning at the second question from the top. "Now when you went in there", down through the answer "I didn't hear any objection to it."

The Court:
All right.

Mr. Simpson:
Shall I proceed?

The Court:
You may proceed.

Mr. Simpson:
This is still Mr. Letchman.

"Q. Now, when you went in there, who is the first person who had anything to say about what the meeting was about?

"A. Well, after about five or ten minutes, or about ten minutes I'll say, I believe Mr. Reese Thomas got up, and as well as I remember made the statement to the effect that 'We are here to discuss ways and means'—he first told about these hostler helpers jobs was going to be abolished—'And we are here to discuss ways and means of trying to get the men back'.

"Q. Was everybody in agreement with that idea?

"A. Yes, sir, I guess they were. So far as I know they were.

"Q. You didn't hear anybody say anything about being opposed to it?

"A. No, sir, I didn't hear any objection to it."

Now then, beginning on page 32 I want to read what Mr. Letchman said about the occasion when Mr. Mitchell and Mr. Woelde went out to the Yards to see if there was any livestock or perishable cars on the waybills out there on Monday morning about 10:00 or 11:00 o'clock, 10:00 or 12:00—11:00 or 12:00 o'clock,

and beginning on the fourth line from the top of page 32.

"Q. How mmuch time during the three day work stoppage did you spend around the Master Mechanic's gate?

"A. Oh, I guess when I saw him over there, something like 30 minutes.

"Q. Who was with him at the time?

"A. I don't know. He was sitting in his car off to the side, and I saw two or three other men. There wasn't anyone with him.

"Q. Were there any other automobiles?

"A. I believe there were two other fellows, and they were in an automobile.

"Q. Were they firemen?

"A. I don't know. I don't think they were.

"Q. To your recollection, Mr. Letchman, I will ask you if you didn't see Reese Thomas, Jody Johnson, C. S. Hawkins and Bruce Bennett there at the time about the Master Mechanic's gate in the early afternoon of Monday, October 24?

"A. Now, I don't remember whether it was October 24. I saw Reese Thomas up there one day. It might have been Monday or Tuesday. I don't remember.

"Q. Were people with him?

"A. Some."

The Court:

"Were there some people with him"? That was incorrectly read.

Mr. Simpson:

"Were there some people with him", thank you, sir.

"A. Somebody was in the car with him.

"Q. Did you recognize any of them?

"A. No, sir, I never noticed who it was.

"Q. Who else did you see around the Master Mechanic's gate on that occasion?

"A. That's all I remember besides two or three other fellows over there in the car, but I don't know who they were.

"Q. Did you see anybody out standing on the ground?

"A. No, I didn't see anybody out standing on the ground.

"Q. How much time did you spend around the Master Mechanic's gate?

"A. About 30 minutes.

"Q. Was that the only occasion you were there during the work stoppage?

"A. Yes, sir.

"Q. And you say that was in the early afternoon of whatever day it was?

"A. It seems to me like it was around 11:00 o'clock in the morning, somewhere along 11:00 or 12:00, I don't remember now.

"Q. Was the gate open or closed when you arrived?

"A. I don't remember but I believe it was open. I won't be positive, but I believe it was.

"Q. Was it open or closed when you left there?

"A. I don't remember that.

"Q. Did anyone open it or close it while you were there?

"A. I don't remember that. I don't remember if they did or not. If they did, I didn't see them.

"Q. Did you know Mr. C. E. Woelde?

"A. The name sounds familiar, but I am not acquainted with him.

"Q. Do you know what if any position he held with the Railroad Company at that time?

"A. It seems to me like it was Yardmaster or Trainmaster, I don't remember.

"Q. Do you know a big fellow named Ben Mitchell?

"A. Yes, sir.

"Q. Did you know him then?

"A. Yes, sir.

"Q. How long had you known him?

"A. I don't know him too well, I just never had too much dealings with him. He works on the main line, and I have never had any, many straight out dealings with him, but I had been knowing him off and on since I have been with the L&N Railroad when I saw him.

"Q. You were reasonably friendly with him?

"A. I was for a while, but I'm not now.

"Q. Well, you were reasonably friendly with him during this work stoppage?

"A. No, sir.

"Q. Did you have any personal difficulty with him?

"A. No. He and I didn't—but I'm just not friendly with him any more, and I wasn't before this work stoppage either.

"Q. He did something to you?"

Mr. Taylor:

We object to the next answer as being incompetent, irrelevant, and immaterial.

The Court:
I sustain the objection to that.

Mr. Simpson:
I think it is competent, Your Honor, to show interest of this Defendant.

Mr. Taylor:
You have already shown that.

Mr. Simpson:
It shows what the situation was there at the time.

The Court:
I sustain the objection to it.

Mr. Simpson:
Down to where, Your Honor.

The Court:
Except th answer "No, sir." Of course, "Did he do something to you", the statement from there on except th answer "No, sir."

Mr. Simpson:
To that question?

The Court:
Yes.

Mr. Simpson:
All right. We except.

"Q. And you were unfriendly to him after that?

"A. I never said anything to him or had any words, and he didn't say anything to me. But I just went my way and he went his.

"Q. You and he, however, never had any personal difficulty or trouble?

"A. No, sir.

"Q. Now, did you see Ben Mitchell at any time during the three day work stoppage?

"A. Yes, sir.

"Q. Where was that?

"A. Well, I was sitting up there with this fellow Hawkins that you asked me about, and he came up in a car, he and some man, I think it was Mr. Woelde.

"Q. Sir?

"A. He came up in a car and I believe there was some man with him, and I think it was Mr. Woelde.

"Q. What, if anything, did he say to you, or Mr. Woelde say to you at that time?

"A. He didn't say anything to me.

"Q. What, if anything, did he say to Mr. Hawkins, to C. S. Hawkins?

"A. He didn't say anything to him that I remember.

"Q. What did you say to either one of them, those two men, Woelde or the other one?

"A. I didn't say anything. But he went in the place, and he asked him Mr. Mitchell, 'Did you find that car' and he said 'Yes', and went on.

"Q. Now, what did you hear Reese Thomas say to him at that time?

"A. Nothing to amount to anything. I heard them talking over there where the car was, and he said something about finding a car of perishables or something, and I understood Reese to say 'You want me

to go help you find it?', or something to that effect, or 'I'll help you find it if you want me to.'

"Q. Did you see Reese Thomas' automobile out there then?

"A. I saw the car he came up in. I don't know whether it was his car or not, I judge it was. He was driving it I think.

"Q. He was driving it?

"A. I believe he was. I won't be positive.

"Q. It was a blue Dodge convertible?

"A. I don't know what kind it was, I never noticed.

"Q. Did you hear Bennett say anything to either Mr. Woelde or Mr. Mitchell?

"A. No, sir, I don't remember whether Bennett was there.

"Q. Sir?

"A. I don't remember if Bennett was there.

"Q. Do you know Bennett?

"A. Yes, sir, but I don't remember seeing him if he was there.

"Q. Did you see him at any time during the three day work stoppage?

"A. Yes, sir, I think I saw him around the grill or some place out there, I believe I did, but I don't remember now. I saw so many of them, I don't remember.

"Q. You told us you heard Mr. Mitchell say something to Mr. Thomas, or Mr. Thomas say something to Mr. Mitchell about a car of perishables.

"A. Perishables or fruit or something.

"Q. Did you understand that to be a railroad car?

"A. Yes, sir, that's what I understood it to be. He said 'A car', and I figured it couldn't be anything but that.

"Q. Inside of the Yard?

"A. Yes, sir.

"Q. You knew what they were referring to?

"A. Yes, sir.

"Q. Did you see the Thomas car move away from in front of the gate at that time?

"A. I think it finally left there, but I don't remember when. I don't think it left right then. I think it left after a little while.

"Q. You were in a different automobile, weren't you?

"A. Yes, sir.

"Q. Did you stay in it all the time?

"A. You mean stay in the car?

"Q. Yes, sir, you just said you were in a different automobile from the Thomas automobile.

"A. Yes, sir. I stayed in it with this fellow Hawkins about 30 minutes.

"Q. His car or your car?

"A. His car.

"Q. Did either one of you leave the car at any time during that 30 minutes?

"A. No, sir.

"Q. How far was that car sitting from the Master Mechanic's gate?

"A. I guess about 40 or maybe 60 feet, something like that.

"Q. And how far was the Thomas car, or the car Thomas was driving?

"A. I don't know, I think he pulled to the gate and on up there a piece. I believe he did, as well as I remember.

"Q. How far in your judgment were you from Thomas and Mitchell at the time they had this conversation?

"A. I guess 40 to 60 feet, something like that, maybe a little more.

"Q. Were you out on the ground?

"A. Yes, sir."

Mr. Taylor:

"Were they out on the ground?"

Mr. Simpson:

"Were they out on the ground?" Thank you.

"Q. Were they out on the ground?

"A. Yes, sir, I think they were talking, standing up out of the car.

"Q. Right in front of the gate?

"A. Not right directly in front of it, but right there close to it, back there a little west of it.

"Q. All you heard on that occasion was something said about perishables?

"A. Yes, sir, yes, something said about going in and getting a car of perishables, or doing something to it.

"Q. Well, did they talk a good little while or just exchange that remark and separate?

"A. Just a minute or a minute and a half, something like that.

"Q. Each one of them talked during that period?

"A. Yes, sir, I think they were.

"Q. Were two of them alone or were there others there close to them?

"A. I don't remember those other fellows around there. I think they were standing there talking to them.

"Q. Mitchell and Thomas?

"A. Yes, sir.

"Q. Where was Mr. Woelde during that time?

"A. If that was Mr. Woelde I think he was in the car.

"Q. How far from the place where Thomas and Mitchell were talking?

"A. I think they pulled up there and they were just on the other side, in a car, a little piece.

"Q. Just standing on the outside of the car Woelde was in?

"A. Yes, sir, maybe 15 or 20 feet, something like that.

"Q. You were 40 or 50 feet away?

"A. Yes, sir, east of it.

"Q. You and Hawkins?

"A. Yes, sir.

"Q. Where was Jody Johnson?

"A. I didn't see Jody Johnson down there.

"Q. You didn't see him?

"A. No, sir.

"Q. Are you telling us he was not there?

"A. I couldn't absolutely swear it, but I don't believe he was there. If he was, I didn't see him, if he was there, I didn't see him.

"Q. That is your recollection?

"A. He was not, that's the best of my recollection.

"Q. And your recollection is also Bruce Bennett was not there?

"A. I don't know whether he was or not. I didn't see him there, if he was there.

"Q. There wouldn't have been anything there at that time to keep you from seeing him if he had been there?

"A. I never noticed. He came down there, and I never noticed who it was."

The Court:

"A car."

Mr. Simpson:

"A car came down there, and I never noticed who it was." Thank you, Judge.

"Q. Where did you—what did you and Mr. Hawkins do while you were sitting there?

"A. Just shot the bull in general; talked about this thing, wishing they could get it straight. We wanted to go back to work, and first one thing and then another.

"Q. Where was it you first got in touch with Mr. Hawkins that day?

"A. I drove around and saw some people down there, and he was sitting down there, and I drove over and met him.

"Q. You got in his car?

"A. Yes, sir.

"Q. Did you leave before Hawkins, or Hawkins before you?

"A. I believe I left before him. I just finally left.

"Q. Was that before or after Ben Mitchell and Woelde got out of the Yard?

"A. You mean when I left?

"Q. Yes, sir.

"A. After they came out and left.

"Q. You stayed there all the time they were in there?

"A. Yes, sir."

Mr. Simpson:

It is "say", but the sense makes it "stay."

"A. Yes, sir.

"Q. What was said between you and Reese Thomas while these two men were inside?

"A. I hollered over there and I said 'What did Mitchell allow', and he said he was going to check a car. I said 'What did you tell him', and he said 'I just told him I would go in there and help him find the car', and that's all.

"Q. That's all you said?

"A. Yes, sir.

"Q. And you don't remember that anyone was there but Reese Thomas?

"A. There was somebody sitting in the car with Reese Thomas but I never noticed who it was.

"Q. Did they stay there all the time Mitchell and Woelde were inside of the Yard?

"A. Yes, sir, I think they did.

"Q. And they were there when you left, weren't they?

"A. No, I believe after Ben Mitchell left, they left, I believe.

"Q. As soon as Woelde and Mitchell came out?

"A. It might have been five or ten minutes after. I don't remember now.

"Q. They left?

"A. I believe they did.

"Q. When you and Hawkins left?

'A. I didn't know when Hawkins left. I went and got my car and went back up the road.

"Q. None of you left until Mitchell and Woelde came out of the Yard?

"A. I didn't.

"Q. So far as you know, nobody left?

"A. That's right.

"Q. None of the three men you remember left?

"A. No, sir.

"Q. They were there all the time they were in there?

"A. Yes, sir.

"Q. Where did you go after you left that place?

"A. I don't remember, but I think I went on down to the Rex Grill.

"Q. Were you and Hawkins sitting out there at the Master Mechanic's gate when Woelde and Mitchell drove up?

"A. Yes, sir.

"Q. How far ahead of Mitchell and Woelde was Reese Thomas' car as they came in there?

"A. I reckon about 8 or 10 minutes, something like that.

"Q. They had been waiting there all that time?

"A. Well, they were there, and they came there about 8 or 10 minutes, something like that, I didn't know.

"Q. They didn't drive in behind or in front of the car that Mitchell and Woelde came in?

"A. They were down there before they ever got there I believe.

"Q. You don't remember now whether that was Monday or Tuesday?

"A. To the best of my memory that was Tuesday. I won't be positive, but I don't remember."

Mr. Simpson:

On page 50 is a short extract, 50 and 51, Your Honor, beginning with the next to the last question on page 50:

"Q. How many men were still in the Parker garage when you left?"

Mr. Simpson:

This has reference to the meeting at Mr. Parker's house on Sunday afternoon.

"A. I don't remember. There was a pretty good crowd in there. I may not have been the first one to leave, I don't remember.

"Q. What is your judgment about the total number of men that were there when you went there?

"A. When I first went in?

"Q. When the meeting started.

"A. I would say 20 men or something like that.

"Q. Give us your best judgment about the number that was still there when you left.

"A. I think the biggest part of them were there.

"Q. Practically all of them, weren't there?

"A. Yes, sir.

"Q. Were they in general agreement or were they in disagreement."

Mr. Taylor:

We object to that, it calls for a mental operation and conclusion, as to whether a group of people were in general agreement.

Mr. Simpson:

May it please the Court, agreements are facts, just the same as any other fact.

The Court:

I think if it was expressed by language he could testify to it. I don't know what he is referring to. Of course, he couldn't read anybody's mind. I overrule the objection.

Mr. Simpson:

All right.

"Q. Were they in general agreement or were they in disagreement?

"A. As far as I saw they were in agreement, or as far as I could detect they were all in agreement.

"Q. You didn't hear any disagreement by anybody?

"A. No, sir.

"Q. While you were there at any time?

"A. No, sir.

"Q. They were in agreement about what was to be done to get the hostler helpers jobs restored, weren't they?

"A. Yes, sir."

Mr. Simpson:

I would like to read briefly from the J. M. Weldon deposition.

The Court:

We are going to take a recess at this time. 20 minutes, gentlemen.

(A short recess was had.)

The Court:

All right, Mr. Simpson, whose deposition are you reading? Mr. Gibson asked to be excused just a minute, but go ahead.

Mr. Simpson:

I see. I didn't know that, Your Honor. Let's read the deposition next of Mr. Baum on page 57, Your Honor.

The Court:
All right.

Mr. Simpson:
At the bottom of that page, the last question and the answer. This gentleman is the deposition of Mr. H. M. Baum, one of the Defendants:
"Q. Well, when you used the word there is a right way and a wrong way to handle those things, tell us what you were talking about when you referred to the wrong way?"

Mr. Taylor:
We object to that. It calls for a mental operation and conclusion of the witness.

The Court:
You will have to read back to get the connection. It may be, it would be admissible if connected up back there.

Mr. Simpson:
All right, sir. Let's go back up then to the second question above that. I am not sure that this is relevant.

"Q. A while ago when I was asking you about the meeting at Parker's house, you commented that there was a right way and a wrong way to handle a labor matter, and you stated I think you advocated handling the matter with the local officials, and then with Louisville if necessary. Did you consider that the right way to handle the grievance?
"A. The way I stated there, yes.

"Q. All right, sir, and what do you consider the wrong way?"

Mr. Taylor:

If Your Honor please, we object to the consideration of the wrong way. He stated in answer to the other question what he had stated previously. He is not giving an opinion, he was giving a statement that was made.

The Court:

Overruled.

Mr. Simpson:

(Reading.)

"A. Well, I don't know, because so far as I can see there was no one individual, whether switchman, trainman, conductors and engineers were all outside of that gate. There was no one individual responsible for nothing.

"Q. Well, when you used the word there is a right way and a wrong way to handle those things, tell us what you were talking about when you referred to the wrong way?"

Mr. Taylor:

I renew my objection.

The Court:

Overruled.

Mr. Simpson (Reading):

"A. I believe the Birmingham News stated that, they said that the strike was illegal. That was wrong,

that was the wrong way if such a thing had happened. They said it was an illegal strike and a wildcat, something like that. Now, they said that, the Birmingham News said that. Now, if that was the steps that were taken I would say it was wrong, but I can't vouch that those steps were taken, I don't know."

Mr. Taylor:
Just a minute, Mr. Simpson. I object and move the answer be excluded, Your Honor, because it is incompetent, irrelevant, and immaterial.

Mr. Simpson:
It shows his mental attitude.

Mr. Taylor:
The statement was volunteered and not in response to the question that was asked.

Mr. Simpson:
This is a Defendant.

The Court:
This is an adverse party, a Defendant in the case.

Mr. Simpson:
A Defendant. It shows his mental attitude, and what he knew.

The Court:
I overrule the objection and overrule your motion.

Mr. Simpson:
That is the only thing on Mr. Baum.
Now next is Mr. Otts.

Mr. Pettus:
Let me find that before you proceed.

Mr. Simpson:
If you will, turn to page 20, Erle, beginning with the second question. It is the second question on page 20, Your Honor.

The Court:
J. B. Otts' deposition?

Mr. Simpson:
Yes, sir.

The Court:
All right.

Mr. Simpson:
J. B. Otts, one of the Defendants:

"Q. When you were standing down beside the Masonic Hall in Inglenook on Friday night before the strike, discussing with Mr. Grissom the question of calling this information meeting, who else was in the group there, talking there?

"A. I believe Mr. McCutcheon was there and maybe Mr. Fleming, I don't recall. There were only three or four there.

"Q. All right, tell us what was said about getting the information meeting together.

"A. Well, the subject was brought up that we hold the meeting, and then came the problem of the place to meet, and I believe that we decided to meet at Mr. Parker's house.

"Q. Who suggested Parker's house?
"A. I believe he did.
"Q. So Mr. Parker was present also?
"A. He must have been."

Mr. Simpson:

Next is on page 41, beginning with the next to the last question on page 41, Your Honor. This is still the deposition of Mr. J. B. Otts:

"Q. Did anybody ask you what Mr. Paschal said or had done about it?
"A. I don't recall.
"Q. You just told them you had taken it up with them, but didn't tell them how far you got.
"A. When I take something up with the General Chairman that's the extent of it.
"Q. Well, is that secret, when you take up anything with the General Chairman?
"A. No, sir.
"Q. Did you tell them what the General Chairman said?
"A. I don't recall whether I did.
"Q. What had the General Chairman said?
"A. He had said the men involved, that is the outside hostler helpers, should make claim for the time that the abolition was in effect, and to protest it to the Company.
"Q. Did you tell the people that?
"A. I don't recall whether I did or not."

Mr. Simpson:

Now, beginning on page 198 of that deposition of Mr. Otts.

The Court:
This is another part of it I believe, isn't it?

Mr. Simpson:
Yes, sir.

The Court:
Is that the same witness?

Mr. Simpson:
Yes, sir, the same book, page 98. I said "198."

The Court:
Oh, you mean 98?

Mr. Simpson:
I beg your pardon. I said 198. It extends to 103. Beginning just below the middle of the page with this question:

"Q. Do you know anybody named Bryam?"
Mr. Simpson:
Has the Court found that?

The Court:
Yes.

Mr. Simpson:
All right.

"Q. Do you know anybody named Bryam?
"A. Yes, sir.
"Q. What is his initials?
"A. J. B.
"Q. Did you talk to Mr. J. B. Bryam?

"A. Yes, sir, I believe I did.
"Q. What is he?
"A. A fireman.
"Q. Where was he when you talked to him?
"A. He called from Montgomery.
"Q. What day did he call from Montgomery?
"A. I couldn't say.
"Q. During the strike period?
"A. During the walkout if that is what you have reference to.
"Q. You know what I mean, the cessation of work between Sunday and Wednesday, from October 23 to October 26?
"A. That is what the newspapers call it.
"Q. What did you call it?
"A. A walkout.
"Q. Was that during the walkout period?
"A. Yes, sir.
"Q. What did you and Mr. Bryam discuss?
"A. He asked me if I could give him any advice.
"Q. Well, what did you—well, did you give him any advice?
"A. No, sir.
"Q. What did you say to him?
"A. I told him this place was closed up so far as I knew, that's all I could tell him.
"Q. What sort of advice did he want?
"A. He just asked for advice.
"Q. You didn't know whether he wanted advice about finances or what?
"A. He just asked for advice.
"Q. He called up and stated 'I want advice'?
"A. Yes, sir.
"Q. And he didn't specify advice about what?
"A. I don't recall he did.

"Q. Your best recollection is he said 'I want advice' and dropped it?

"A. Yes, sir.

"Q. What did you tell him?

"A. Like I told you before.

"Q. What did you tell him in response to his request for advice?

"A. What did I tell you a moment ago?

"Q. Do you remember what you told us?

"A. Yes, but evidently you can't remember it.

"Q. What did you tell us?

"A. I told him the only thing I could tell him was that everybody had walked out and the place was shut down.

"Q. Did you tell him anything about what they ought to do in Montgomery?

"A. No, sir.

"Q. Did you ask him anything about what they were doing or had done in Montgomery?

"A. No, sir, I don't recall.

"Q. Did he tell you who was in Montgomery with him?

"A. No, sir, I don't think he did.

"Q. Did you happen to know who was down there with him?

"A. No, sir.

"Q. Did you know that they were, what they were doing in Montgomery at that time?

"A. I had seen him leave that morning on the local.

"Q. What morning?

"A. On Sunday morning. I don't know when he left there.

"Q. Left where?

"A. Montgomery.

"Q. Did you have a conversation with him before he left on the Sunday morning?

"A. I don't recall having any conversation with him.

"Q. Who was his engineer?

"A. I believe it was J. R. Frazier.

"Q. Do you know how he got to Montgomery?

"A. No, sir.

"Q Do you know how Dismukes got down there?

"A. No, sir.

"Q. Now, when Bryam called you, you don't recall whether it was day or night?

"A. It was nighttime.

"Q. Where did he catch you?

"A. He called and I was not at home and he left the operator's number for me to call.

"Q. And when you got home you accepted his call?

"A. Yes, sir.

"Q. Did he tell you where he was in Montgomery?

"A. I believe he said he was at the Gary Hotel.

"Q. Did he tell you what he was doing in Montgomery at that time?

"A. I don't know that he did.

"Q. He went down on the local that Sunday. What was he due to come back on?

"A. He was due back on the local Monday.

"Q. Did this call come after he was due to be back in Birmingham?

"A. Yes, it must have.

"Q. Well, did you ask him why he was still in Montgomery, why he wasn't back in Birmingham?

"A. I don't recall having asked him that.

"Q. Did he tell you?

"A. I don't recall.

"Q. Did you mention whether the L&N was operating in Montgomery?

"A. I don't recall that.

"Q. Did you ask him about the situation so far as the work stoppage in Montgomery was concerned?

"A. I don't recall that.

"Q. Did he tell you anything without you asking him?

"A. Not to my knowledge.

"Q. Did you give him any advice with respect to what he should do with respect to his staying down in Montgomery?

"A. No, sir.

"Q. Did you send any message to Mr. Bryam or to Mr. Dismukes?

"A. No, sir."

Mr. Pettus:

"Did you send any message by Mr. Byram to Mr. Dismukes?"

Mr. Simpson:

That's right, "Did you send any message by Mr. Byram to Mr. Dismukes?"

"A. No, sir.

"Q. Do you know of your own knowledge what Mr. Byram and Mr. Dismukes did in Montgomery?

"A. No, sir.

"Q. That is on Monday or Tuesday?

"A. No, sir.

"Q. Have they told you what they did down there?

"A. No, sir.

"Q. Have you heard what they did?

"A. No, sir.

"Q. Now then, when Mr. Barker called you from Decatur you told us he was a fireman in Decatur?
"A. Yes, sir."

Mr. Simpson:
And I want to skip then to page 105, about this call from Mr. Scoggins at Decatur.
"Q. Did he call you before or after Barker?"

Mr. Simpson:
That is just above the middle of the page, Your Honor.

"Q. Did he call you before or after Barker?
"A. I couldn't say.
"Q. What time did Mr. Scoggins call you, at what time? What did Mr. Scoggins call you about? Did he pay for his call?
"A. Yes, sir.
"Q. He invested a dollar or so in his call, and what did he say to you?
"A. He asked me practically the same thing Barker did.
"Q. What did Mr. Scoggins say, his words, the best you recall?
"A. Well about the same thing Barker said."

Mr. Simpson:
Now, that's all from Mr. Otts' deposition.
Now, Mr. Reese Thomas, A. R. Thomas' deposition, page 2. Mr. Thomas is one of the Defendants, "When is the first time you heard there was going to be such a meeting?" I guess I had better read back a little further to get the connection, up there, the question which says "Were you one of those who attended

the meeting in Mr. Parker's house on Sunday afternoon?" Do you find that place?

Mr. Taylor:
Yes.

Mr. Simpson:
All right.

"A. Yes, sir.
"Q. October 23?
"A. That's right.
"Q. When was the first time you heard there was going to be such a meeting?
"A. Friday night, when I talked with McCutcheon, he told me they had agreed on meeting at Shorty Parker's house at a Union meeting earlier in the night. I don't recall whether it was in the meeting or outside of the meeting."

Mr. Simpson:
Now, page 13 of the same deposition, beginning with the question:

"Q. How did you plan to be of assistance in getting the hostler helpers jobs restored?
"A. By my moral support, is all the support I had.
"Q. You were ready to do whatever you could, of course?
"A. That's right."

Mr. Simpson.
Now, on page 28, beginning with the last question on that page. This is still the deposition of Mr. Reese Thomas.

"Q. Give me the name, if you will, of every person that you saw Sunday night in the vicinity of Rex's Barbecue, and in the vicinity of the roundhouse gate.

"Mr. Taylor:
You are asking in addition to the ones he gave you Mr. Gibson?

"Mr. Gibson:
Yes, sir.

"A. I saw everybody named in this suit at one time or another, as well as approximately five hundred or a thousand men that was not named in it.
"Q. How long did you stay in the vicinity or in the neighborhood on Sunday night?
"A. I stayed there all night.
"Q. What time did you leave Monday morning?
"A. Around 9:00 o'clock or 10:00 o'clock.
"Q. Where did you go from there?
"A. I went to town.
"Q. Is that the visit you made to the main office on Morris Avenue?
"A. That's right."

Mr. Simpson:
That's all from Mr. Thomas' deposition.

Next is Mr. J. M. Weldon, on page 14, down about two-thirds of the way down the page is a question.

"Q. Do you know a fireman named Lee Thomas, colored?"

Mr. Simpson:

This is the deposition of Mr. J. M. Weldon, one of the defendants.

"Q. Do you know a fireman named Lee Thomas, colored?

"A. I may know him, but I wouldn't—there is a gang of those Negroes out there.

"Q. Did you see Lee Thomas down at the L&N Passenger Station Sunday night, October 23?

"A. Yes, I think I did.

"Q. You know you did, don't you?

"A. I am reasonably sure I did."

Mr. Simpson:

Now, on page 16, beginning just below the middle of the page with the question:

"Q. I will ask you did you at any time that night expose that knife with the blade open to that fireman?

"A. No, sir. I might have casually had my knife out picking my fingernails, and he may have seen it, I don't know. I got the habit of, if I find dirt under my nails, I will pick it out. But as far as pulling the knife out and scaring Lee Thomas, I didn't do it.

"Q. You don't think you were picking your fingernails on Sunday night out there with the walkout going on, do you?

"A. There is a possibility. I hadn't walked out.

"Q. Some had?

"A. So far as I was concerned, I was on the off board.

"Q. What time was it down there that you saw Lee Thomas?

"A. I don't know that.

"Q. What is your best recollection about the time?

"A. About 10:00 o'clock."

Mr. Simpson:

Now, call Mr. Hobson, please.

Mr. Pettus:

This man has been sitting in the Courtroom back here a couple of days, Your Honor. We object to using him.

Mr. Gibson:

The witness was not under subpoena.

The Court:

How is that?

Mr. Gibson:

Until an occurrence in the trial yesterday, we didn't have him subpoenaed. We didn't know we would use him as a witness.

The Court:

All right, that will go to his credibility rather than admissibility of his testimony.

C. L. HOBSON, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Gibson:

Q. Is this Mr. C. S. Hobson?

A. C. L Hobson

Q Do you live in Birmingham, Mr. Hobson?
A I live in Center Point.
Q. For whom do you work?
A. L&N Railroad Company.
Q. Did you work for the L&N in October, of 1955?
A. Yes, sir.
Q. In what capacity, please, sir?
A. Locomotive engineer.
Q. Do you recall the time in October, of last year, Mr. Hobson, when there was a strike or walkout at the Boyles Yard?
A. Yes, sir.
Q. Were you on duty that night?
A. Yes, sir.
Q. What is the first thing that you noticed on that night out in the Yard that was unusual or out of the ordinary?
A. Well, I noticed the engines began to stop in the clear of the main line, and people leaving the jobs, the employees leaving their jobs.
Q. Yes, sir. Now, prior to that time had things been operating in a normal and usual way?
A. Yes.
Q. All right, sir, go on.
A. Well, just a few minutes to 9:00 I left the cab track on the shop lead with my crew and fireman, and there had been rumors that there was to be a strike. And there was some discussion among my crew, the fireman in particular, whether the strike was legal, and so forth.
And, of course, I didn't know, I couldn't give any advice along that line. I hadn't—I didn't know a thing about it. So as we were leaving the cab track, after putting up the cab, I saw two men walking across from the North Yard towards the roundhouse, and

these two men were McCutcheon and A. R. Thomas.

Q. All right, sir. Now, what, if anything, did you do then?

A. Well, the fireman asked me what he should do and I told him if it was a legal strike that my advice would be just to observe the strike. And we pulled in the clear of the Huntsville main line a few minutes to 9:00 and the crew left the engine.

Q. Did you then leave the engine yourself?

A. I stayed on the engine and asked a crowd that accumulated around the engine if the strike was legal, whose strike it was, and I had a reply from the crowd that it didn't make any difference, that I had better leave the job.

Q. Who said that, if you know?

A. I identified the voice as C. S. Hawkins.

Q. Is he a fireman?

A. This was not my fireman but that was a fireman for the L&N.

Q. All right, sir. Now then, did you stay around there or did you leave the vicinity and go somewhere else?

A. After Mr. Alf Walker, Simrell, Eddie Houts, and several more came up to my engine, I got down with them and walked towards the Yard Office with the intention of asking the Trainmaster what to do. I didn't have a crew, no fireman, and everybody had quit work, it looked like. But the lights went out in the Yard Office, and so I just decided just to come on back to the roundhouse and turn in myself.

Q. When you got up to the Yard Office were there any people around on the outside of it that you saw?

A. Yes, there was a big crowd in front of the Yard Office, and Mr. Mitchell was leaving the office. I saw a number of people around there, including H. M. Baum, T. E. Davis, Barnett.

Q. Is that Bruce Barnett?
A. Bruce Barnett.
Q. All right, sir. Did you see M. L. Hall at any time that evening?
A M. L. Hall was in this crowd.
Q Did you see Howard Anderson at any time during Sunday afternoon?

Mr. Pettus:
We object to leading the witness, may it please the Court.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. You may answer that question.
A. I saw Howard Anderson in the crowd also.
Q. There at the Yard Office?
A. There in front of the Yard Office.

The Court:
Who was that now?

The Witness:
Howard Anderson.

Mr. Gibson:
Howard Anderson.

Q. Did you see any of the other men who are Defendants sitting here in the Courtroom around the Yard Office when you went up there Sunday night?

The Court:
That is after he left his engine?

Mr. Gibson:
Yes, sir.

A. No, sir.

Q. All right, sir. Now then, did you stay in the Yard, or what did you do then?

A. I went to the roundhouse with a group of engineers and mailed a trip card, and went to the parking lot and got in the car with Mr. Houts and rode over to the Rex's Cafe.

Q. All right, sir. Did you see any of these gentlemen who are Defendants in this case at or around the Rex's Barbecue or in that neighborhood?

A. Yes, I saw Mr. McCutcheon, Mr. Thomas, Parker, Howard Southerland around the Rex's Cafe.

Q. How long did you stay around the Rex's Cafe?

A. Well, I stayed there until some time after 3:00 o'clock the next morning.

Q. 3:00 o'clock Monday morning?

A. That's right.

Q. Did you go over during that time in the general vicinity of that little foot bridge that goes from Vanderbilt Road into the Railroad Company's Yard?

A. Yes, sir.

Q. Did you see any of the men who are the Defendants in this case at or near that foot bridge at any time?

A. I talked to McCutcheon at the foot bridge.

Q. Tell the gentlemen on the jury exactly where Mr. McCutcheon was standing when you had that conversation?

A. McCutcheon was standing to the right of the foot bridge, across to the L&N roundhouse. He was standing at the right. There was a car parked to the left, and I believe it to be Mr. Thomas' car.

Mr. Taylor:
I move to exclude that answer, what he believes.

The Court:
I sustain the objection. If he knows, why he can testify.

The Witness:
I know this to be Mr. Thomas' car.

Q. You know that is Reese Thomas' car?
A. Yes, sir.
Q. Now then, did you have any conversation with McCutcheon there at the foot bridge?
A. I talked to Mr. McCutcheon and advised him that if this strike was illegal that he was doing the wrong thing by going along with it.
Q. What, if anything, did he say to you?
A. He told me that he had attended a meeting at Shorty Parker's house, and that they had voted 6 to 14, 6 in favor of the strike and 14 against, but they had to strike anyway, and that he was not in favor of handling the situation in this manner, and that he would like for it to be handled in the proper channels.
Q. All right, sir. Mr. Hobson, do you know Mr. Sexton?
A. Yes, sir.
Q. Do you know Mr. Breedlove?
A. Yes, sir.

Q. Yesterday afternoon counsel for the Defendant on cross examination asked Mr. Sexton a question substantially like this, counsel asked Mr. Sexton whether or not Mr. Sexton had had a conversation with you in which he, Mr. Sexton, had said that he wanted, or hoped to get O. C. Breedlove into this lawsuit some way? I will ask you whether or not you ever had any such conversation with Sexton?

A. No.

Q. You were in attendance here at Court on yesterday, weren't you, Mr. Hobson?

A. Yes, sir.

Q. You were subpoenaed by the Defendants in the case, weren't you?

A. Yes, sir.

Q. Did you talk to the attorneys for the Defendants?

A. Yes, sir.

Q. Are you still under subpoena by them?

A. Yes.

Q. Did you receive a telephone call last night from any of these Defendants?

A. Yes.

Q. Who was that?

A. Mr. Breedlove.

Q. What did he tell you?

A. Well, he—he advised me that they had decided to drop me this morning.

Mr. Gibson:

You may examine him.

Cross Examination.

By Mr. Taylor:

Q. Now, Mr. Hobson, were you in the Courtroom when Court opened yesterday morning?

A. Yes, sir.

Q. Yesterday was Tuesday, wasn't it?

A. Yes, sir.

Q. Yesterday was Tuesday. Were you in the Courtroom any time Monday?

A. No, sir.

Q. Now, you were in Court at 9:00 o'clock Tuesday when the Court opened, is that right?

A. Yes, sir.

Q. You were not under subpoena by any person at that time, were you?

A. No, sir.

Q. Had anybody told you to come to Court that morning?

A. No, sir.

Q. You came of your own free will, and came in here and sat down, is that right?

A. Right.

Q. Now, Mr. Hobson, Mr. Byrd, one of the attorneys for the Defendants in this case some time during the day Tuesday asked to talk to you, didn't he?

A. Yes, sir.

Q. What time of day was that?

A. At the first recess.

Q. About 10:30 or something of that kind?

A. Yes, sir.

Q. You told him, didn't you, that you would not talk to him unless you were under subpoena, is that right?

A. I told him I didn't care to discuss the case with him.

Q. Didn't you tell him you would not discuss the case with him unless you were under subpoena?

A. I told him if he wanted me in here that he would have to subpoena me.

Q. All right, you told him that?

A. Yes, sir.

Q. Well, did he get a subpoena and serve it on you?

A. Yes, sir, he did.

Q. Where were you when he served it on you?

A. In the hall.

Q. Did you come back to the Courtroom then?

A. No, sir.

Q. So you were not absolutely correct when you told the jury in response to Mr. Gibson's question that when you were in the Courtroom yesterday you were under subpoena? That wasn't correct, was it?

A. I didn't say that.

Q. Well, they heard what you said. You deny you said that a minute ago?

A. I did not say that.

Mr. Taylor:

Your Honor, I would like to have his testimony read back, to refresh my recollection.

The Court:

That is right back at the beginning of the examination.

Mr. Taylor:

Right at the end of Mr. Gibson's direct examination.

The Witness:

I said I was subpoenaed by the defense.

The Court:

Can you turn back, Mr. Hale, and find it right at the end of the direct examination?

(The record was read to the Court and counsel out of the hearing of the jury.)

Q. Now, Mr. Hobson, when did you go to work Sunday? Sunday night that the work stoppage occurred is what I am referring to?

A. 3:00 o'clock.

Q. When was your shift due to get off?

A. 11:00.

Q. You say you had heard rumors that work stoppage might occur?

A. Yes, sir.

Q. When was the first time you heard that rumor?

A. Well, I had been hearing the rumors for a day at least before it occurred.

Q. At least a day. You had heard it some time Saturday then?

A. Yes.

Q. At least by Saturday?

A. By Saturday, Yes, sir.

Q. Did you pass that word along to anybody, that you had heard such a rumor?

A. I discussed it with my crew.

Q. With your crew?

A. Yes, sir.

Q. And you had switchmen and firemen and members of various crafts in your crew, is that correct?

A. Yes, sir, switchmen and firemen.

Q. Now, Mr. Hobson, I will turn this board around just a minute. In regard to your location there on that Sunday night, when you testified on direct examination that you first noticed something unusual, I am going to let this represent the washroom (indicating). Now indicate on the blackboard, please, sir, where your engine was stopped in relation to the washroom if you can. If this location should be up here, why put it up here?

A. This (indicating) is the washroom, and there is a track lead near the washroom, a cab track shop lead, that runs and turns up something like this (illustrating). There is a curve back around this way.

Q. All right, sir.

A. Then there is the Huntsville main line, this lead. This is the Huntsville main line. I stopped in the clear here, right here (indicating). I noticed other engines around in the Yard were stopped, and the crews leaving.

Q. What designation did you give the point where you stopped, the line you referred to there?

A. That is near the Yard Office.

Q. Didn't you refer to it as the—

A. I referred to it as the shop lead.

Q. As the shop lead?

A. Leading to the Huntsville main line.

Q. Does this lead or track—that is a track, when you say "lead"?

A. Yes.

Q. Does this stop here or go on further down?

A. It goes on down and connects with the North main line.

Q. When you stopped here were there any cars or cuts of cars located anywhere on any of these leads, or in front of you or back of you or on the side?

A. No, sir, these leads stay clear. They are clear of the Yard itself, leading to the tracks, and they are in the clear of cars.

Q. How far is it from the point where you were stopped to the washroom?

A. It is about two and a half blocks.

Q. About two and a half blocks?

A. Yes, sir.

Q. Do you have any judgment as to the distance in feet?

A. No.

Q. Well, you say it is roughly two and a half blocks, city blocks?

A. Yes, sir.

Q. Or the equivalent of it?

A. Yes, sir.

Q. I believe you testified you saw two men that night after you had stopped there?

A. No, I saw them on the way after I left the cab track, I saw them walking in the North Yard.

Q. You left the cab track?

A. Yes, sir.

Q. Which is the cab track?

A. The cab track is down here by the roundhouse.

Q. You left then in your engine going up this way (indicating)?

A. Yes, sir.

Q. Where did you see the two men?

A. They were coming from the North Yard.

Q. Would you put approximately the relative location where you saw them there?

A. The North Yard is over here and they were walking in here (indicating), two men were walking towards the roundhouse.

Q. All right. You were right here at the washroom, the washroom is in the roundhouse, is that right?

A. That's right.

Q. You were right here at the roundhouse when you saw them?

A. No, I was up half way probably, not half way, but just about half a block from the roundhouse.

Q. About a half a block from the roundhouse?

A. Yes.

Q. About how far were you from the two men when you saw them?

A. I was about 40 feet.

Q. 40 feet?

A. Yes, sir.

Q. Are you sure of that?

A. The tracks are about 40 feet from where they were walking.

Q. They were walking towards the washroom?

A. That's right.

Q. It was dark out there, wasn't it?

A. Well, there is lights, we have lights out there that light up the ground pretty well.

Q. Now, who did you say those two men were?

A. There was Mr. McCutcheon and Thomas.

Q. How was Mr. Thomas dressed on that occasion?

A. Well, he had on pants and shirt, and dress shoes.

Q. Could you tell the color of the shirt he had on?

A. No, I don't know the color of his shirt.

Q. Do you know whether he had on khaki pants or denim pants or wool pants or anything of that kind?

A. I would say it was wool pants.

Q. He had on wool pants?

A. Yes, sir.

Q. How about Mr. McCutcheon, how was he dressed?

A. About the same way.

Q. Now, Mr. Hobson, when is the first time that you told anybody about seeing these two men down there on that occasion?

A. Well, I—I told Mr. Robey I saw these men I believe.

Q. Did Mr. Robey send for you to come down and talk to him?

A. Yes, sir.

Q. Who sent for you to come down there and talk to him?

A. I believe Mr. Robey asked me to come down.

Q. Did he personally ask you to come down there?

A. I believe so. I believe he asked me to come down to see him.

Q. When was that?

A. I don't remember.

Q. Has it been six months ago?

A. I really don't know what date that was.

Q. Has it been at least six months ago?

A. Yes, it has been.

Q. Possibly more than that?

A. Possibly.

Q. Was it shortly after this work stoppage occurred?

A. Not shortly afterwards, no.

Q. All right, where did you see Mr. Robey?

A. I went down to his office.

Q. Where was that?

A. Down to the Comer Building, I think.

Q. Did he tell you he was an L&N employee?

A. He told me he was employed by the L&N Railroad Company.

Q. Did he tell you he was formerly an FBI man?

A. Yes, sir.

Q. I believe you testified that your crew began to ask you for advice?

A. Yes, sir.

Q. Is that correct?

A. The fireman asked me for advice.

Q. What was his name?

A. The fireman was a Birmingham Mineral Fireman, not on my Division.

Q. You had been working with them there all day, hadn't you?

A. I had worked with them; not all day.

Q. Well, all your shift I am talking about, is that right?

A. I worked with them from 3:00 o'clock to 9:00.

Q. Had you ever worked with them before?

A. I don't believe I had.

Q You just happened not to remember his name, is that right?

A. I probably knew his name. I mean I don't remember.

Q. They didn't ask you anything about anybody except the Defendants in this case, did they?

A. Well, yes, they just asked me what I knew about it.

Q. And the only thing you told them was about people that you knew had been named as Defendants in this lawsuit, isn't that right, Mr. Hobson?

A. No, sir.

Q. You didn't tell them who that fireman was, did you?

A I told him I saw Mr Walker out there, as well as I saw Mr. Thomas, and I told him I saw Mr Houts up there, as well as Mr Baum And I named over Mr Mitchell and a number of others that I saw.

Q. All right, when your crew asked you for advice, what did you tell them?

A. I told him I wouldn't give him any advice, that I didn't have anything official on a strike, nobody notified me, and that it was all rumors, so far as I was concerned.

Q. You told them to make up their own minds, and do what they wanted to, in effect, didn't you?

A. I told them if the strike was legal that I would observe the strike.

Q. Did you tell them to leave or not to leave the premises?

A. I told him to use his own judgment about leaving.

Q. That is what I asked you a minute ago, if you didn't tell them to use their own judgment?

A. Yes, sir.

Q. Well, did they use their own judgment and decide to leave after you told him that?

A. He left the engine.

Q. Did the whole crew?

A. The fireman left the engine, and the switchman left.

Q. That left you there alone, is that correct?

A. That's right.

Q. What time was this?

A. It was about 9:00 o'clock.

Q. About 9:00 o'clock?

A. Yes, sir.

Q. That is your best judgment as to the time, is that correct?

A. That's right.

Q. Were you just sitting there by yourself on the engine?

A. No, sir, I stood out on the deck of the engine.

Q. I believe you testified a moment ago that the crowd of men came around your engine, is that right?

A. Yes, sir.

Q. How close did they get to the engine?

A. They came up to the foot board of the engine.

Q. Where were you?

A. I was on the back part of the engine, on the deck of the engine.

Q. On the deck of the engine?

A. Yes, sir.

Q. Could you see the crowd without any obstruction from where you were?

A. Yes, sir.

Q. Who did you see in that crowd?

A. Well, there was Walker, Simrell, Eddie Houts, Hawkins, that's some of them I remember in the crowd.

Q. You don't remember others, any others?

A. No.

Q. Do you say that from the crowd that Eddie Houts and Mr. Simrell were in that somebody hollered out "You better come on out", or words to that effect?

A. I asked the men if the strike was legal, and this voice out of the crowd says that it didn't make any difference whether it was legal or not, "You better come on out."

Q. That was the crowd that Eddie Houts was in and Mr. Simrell, is that right?

A. The same crowd.

Q. From which this voice came?

A. Yes, sir.

Q. So far as you know it could have been Houts talking, is that right?

A. The voice was that of Mr. Hawkins.

Q. You didn't see him make any statement, did you?

A. I heard his voice, and I recognized it.

Q. You heard what you thought was his voice, is that right, Mr. Hobson?

A. I heard Mr. Hawkins voice, and I saw him in the crowd.

Q. You didn't see him make that statement, did you?

A. No.

Q. And you are an expert on recognition of voices?

A. Yes, sir.

Q. Oh, where have you had training in that field?

A. Well, I have been in this world forty some odd years, and I have had quite a bit of experience listening at voices.

Q. You make it a practice to try to identify all the voices you hear, is that right?

A. I try my best to recognize voices that I hear.

Q. And the only reason you say it was Hawkins and not somebody else was because in the dark, without being able to see him, you say you recognized his voice?

A. I recognized his voice, and I saw him in the crowd.

Q. All right. Did the crowd leave after that unidentified voice spoke up?

A. Yes, sir.

Q. What did you do?

A. I made the statement that I left with Mr. Simrell, Mr Houts, Mr. Walker, and walked to the roundhouse and mailed a trip card.

Q. With the exception of this voice from the darkness, nobody else told you to leave out there, did they?

A. No, sir.
Q. Did you go out the gate with Mr. Simrell?
A. I went out the gate with Mr. Eddie Houts.
Q. Did you see Mr. Simrell go out the gate?
A. I don't recall seeing him go out.
Q. Do you know which gate Mr. Simrell went out?
A. No.
Q. What gate did you go out?
A. I went out the roundhouse gate.
Q. You went out the roundhouse gate?
A. Yes, sir.
Q. Did Eddie Houts and the rest of the crowd go out the same gate with you?
A. I was with Mr. Eddie Houts.
Q. When you got to the Yard Office were the lights on or off?
A. When I got to the Yard Office the lights were on. They went off really before I got there.
Q. Well, which was it? Let's get it straight.
A. I said they were on.
Q. When you got there?
A. Before I got there; and by the time I got there the lights went off, as I was approaching.
Q. How far were you from it when they went off?
A. Oh, I would say 30 feet.
Q. And the lights went off and you came on up there in the darkness, is that correct?
A. No, I turned around and come back.
Q. Oh, you turned around and came back?
A. Yes, sir.
Q. Where?
A. I came back with Mr. Simrell, Mr. Houts, Mr. Walker passed my engine and on to the roundhouse.
Q. Went on to the roundhouse?
A. Yes, sir.

Q. When you were there about 30 feet from the Yard Office I believe you testified that is where you saw Mr. Ben Mitchell, out in front, is that correct?

A. He was leaving the Yard Office.

Q. Then it was after you saw him that the lights went out, is that correct?

A. About the time I saw him the lights went out.

Q. He was leaving the Yard Office as you saw him?

A. Yes.

Q. Was he already outside?

A. I beg your pardon?

Q. Was he already outside?

A. No, he was in the door.

Q. Did he have his lunch in his hand?

A. I believe he did.

Q. He was headed in the direction of the outside, is that true?

A. Yes.

Q. Now, you turned around and didn't go to the Yard Office, is that correct?

A. No.

Q. You turned around and went back to the roundhouse?

A. In the opposite direction, towards the roundhouse.

Q. What did you do when you got to the roundhouse?

A. Mailed a trip card.

Q. Who did you see down there?

A. Nobody was in the roundhouse.

Q. There was nobody in there at all?

A. No, except men that went in the roundhouse with me, Mr. Walker, Mr. Houts, and Mr. Simrell.

Q. Now, Mr. Jordan's office is in the roundhouse, isn't it?

A Yes.

Q. Was he there?

A. No.

Q. He is the gentleman that called their crews, isn't he?

A. Yes, sir.

Q. Was there anybody in the office at all?

A. No.

Q. Shut down tight?

A. Yes.

Q. After you mailed in your trip card, if that is the proper terminology, did you then leave?

A. Yes, sir, I went to the Parking lot near the roundhouse office or washroom.

Q. Was that inside of the L&N premises?

A. Inside of the L&N premises.

Q. You got in the car?

A. I got in Mr. Eddie Houts' car and drove out the roundhouse gate to the Rex's Cafe.

Q. What time was this?

A. Oh, about 9:30 or 40 I imagine.

Q. Now, you left the roundhouse gate, is that right?

A. I drove to the gate.

Q. And went to Rex's Barbecue?

A. Yes, sir.

Q. Where did you park your automobile?

A. I parked it there outside of Rex's Cafe.

Q. Did you go in Rex's Cafe?

A. Yes, sir.

Q. How long did you stay in there?

A. Well, I stayed around Rex's Cafe, in and out, I drank coffee, and talked to Mr. Walker and a num-

ber of people there, the proprietor, and Mr. Parker. I was in and out of there a number of times until around 3:00 o'clock next morning.

Q. Didn't you say a minute ago, Mr. Hobson, if I understood you correctly, that as you came out of there you saw Mr. McCutcheon standing by this footbridge?

A. I didn' tsay I was coming out of there when I saw him, but I saw him some time while I was there and talked to Mr. McCutcheon while he was at the footbridge.

Q. Where is the footbridge in relation to Rex's Barbecue?

A. Directly in front of Rex's Barbecue.

Q. Directly in front of Rex's Barbecue?

A. Yes, sir.

Q. How long had you been in Rex's Barbecue before you saw Mr. McCutcheon over there?

A. I don't know.

Q. You say a crowd of people were standing around Rex's, or did you say that?

A. Yes, I said that.

Q. Were there people in that crowd from all the crafts that work out at Boyles there?

A. Yes.

Q. Now, about what time did you go over there to see Mr. McCutcheon?

A. It was somewhere between 9:00 o'clock and 3:00 o'clock.

Q. Is that the best that you can give us, 9:00 to 3:00?

A. To be sure, that's the best I can give you.

Q. You talked to a lots of other people that night too, didn't you?

A. Yes, sir.

Q. Do you remember all of those conversations?

A. I don't believe I remember all of the conversations, no.

Q. Do you remember any of them in the same detail you remember the one you had with Mr. McCutcheon?

A. Well, I could, if you ask me who it was and remind me of who I talked to, I could probably remember, but it would be—there was of no importance. I didn't,—I didn't talk to anybody of any importance.

Q. Did you attach any importance to the conversation with Mr. McCutcheon?

A. I sure did.

Q. Or did Mr. Robey tell you it was important?

A. I sure did attach some importance to it.

Q. Did he tell you that there was a work stoppage going on, is that correct?

A. Yes.

Q. You already knew it, didn't you, you had been hearing about it for six hours?

A. Well, it looked like it, to be a work stoppage.

Q. There wasn't anything new to you when you talked to McCutcheon about it, was there?

A. No.

Q. Were you paid when you went down to Mr. Robey's office?

A. No.

Q. You didn't lose any time for that, did you?

A. No.

Q. Well, you got your pay for the time you spent down there, didn't you?

A. No.

Q. Did you lose some time for it? Let's get it straight.

A. No.

Q. I can't understand it.

A. I didn't lose any time, and I didn't get any pay for it.

Q. Well, were you working when you went down there?

A. No.

Q. It was a work day for you?

A. Yes.

Q. And you were not docked any for the time that you spent in Robey's office, instead of on the railroad, were you?

A. I was on the job. I go to work at 11:00 o'clock, and I was off all during the day. I have 16 hours off,

Q. You went to see Mr. Robey in your off time?

A. On my own time.

Q. You volunteered to go down there to see him?

A. Yes, I volunteered to go down there.

Q. Now you don't like Reese Thomas at all, do you?

A. Reese Thomas has been a very good friend of mine up until about the strike, about the time of this work stoppage, and I haven't had very much to do with him since that time.

Q. You were looking for an opportunity to come up here and say something that would hurt him, aren't you?

A. I tried every way in the world to keep from coming up here—

Q. You came up here Tuesday morning voluntarily?

A. —as a witness.

Q. No, sir-ree, you just told me a minute ago you came up here of your own free will, came in here as a member of the public and sat down in this Courtroom, is that right?

A. I said I didn't come up here on my free will as a witness.

Q. Who told you to come up here Tuesday?

A. I came up here as a spectator.

Q. All right, sir, that's what I asked you a minute ago. Now, you are also a very good friend of this man Johnny Sexton, aren't you?

A. Very good.

Q. Very close to him, aren't you?

A. Not any closer than I am to a lot of my friends.

Q. All right, you are close to him. You saw him leave. You talked to him after he testified in this Court, didn't you?

A. I spoke to him and—well, I had a cup of coffee with him since then.

Q. That's right, and you talked to him about his testimony, didn't you?

A. I haven't asked him anything about his testimony.

Q. Well, did he volunteer something about it?

A. Well, he did mention that he made his testimony.

Q. And he told you what he said, didn't he?

A. He didn't tell me all.

Q. He told you some of the big officials of the L&N Railroad in here seemed to like his testimony, didn't he say that to you?

A. No.

Q. Now, in this same conversation, when did it take place, the one I am referring to, about, after you testified?

A. Well, I saw Mr. Sexton at 10:30.

Q. Where did you have that coffee?

A. At a restaurant across the street.

Q. I will ask you if you didn't say to Mr. Sexton at that time and place this, or this in substance "I hope I get a chance to get on the witness stand, I'll really let them have it", or "I'll really hurt them"?

A. No.

Q. Did you say anything like that?

A. No.

Q. Didn't you say anything at all about the prospects of your testifying?

A. I told him I tried every way in the world to keep from being here as a witness.

Q. And the way you tried—

A. Until the defense subpoenaed me.

Q. And the way you tried was to voluntarily come up here as a spectator Tuesday morning and sit down and watch what was going on, is that what you tell the jury?

The Court:

That is an argument, Mr. Taylor.

Mr. Taylor:

All right.

Q. Now, you said—you called Mr. Breedlove's house last night, didn't you, Mr. Sexton? Let's get it straight.

A. My name isn't Sexton.

Q. I beg your pardon. Excuse me, Mr. Hobson, I'm sorry. So you called Mr. Breedlove, didn't you, Mr. Hobson?

A. I did.

Q. And his daughter answered the phone, didn't she?

A. Yes.

Q. When you told these gentlemen a minute ago that Mr. Breedlove called you, that was a mistake wasn't it?

A. No.

Q. Well, didn't you call Mr. Breedlove?

A. Yes.

Q. You just got through telling me—

A. I called Mr. Breedlove after he called me.

Q. You asked Mr. Breedlove to please see if he could do anything, what he could to get you out of coming to Court, isn't that right?

A. Mr. Breedlove told me that they would drop me.

Q. You asked him to, didn't you, sir?

A. No, I didn't ask him to.

Q. You didn't say anything about that at all?

A. No.

Q. You say that didn't happen?

A. He told me in his conversation when he first called me that they had decided to drop me.

Q. That was in response to your request that you be allowed to be dropped, isn't that right?

A. I didn't make any request.

Q. Well, he didn't tell you to come up here today, or the attorneys for the Defendants, did they?

A. I told him I had a subpoena to come up here, and I was going to be here until somebody in authority told me not to.

Q. Didn't Mr. Pettus notify you this morning that you were not going to be needed as a witness for the Defendants?

A. Mr. Pettus informed me that he would not need me.

Q. All right; you consider him, so far as that subpoena is concerned, as a person in authority, don't you?

A. Yes.

Q. Did you report this conversation with Mr. Pettus to anybody else?

A. Yes.

Q. To whom?

A. I told Mr. Sexton I believe that they wasn't going to use me this morning.

Q. Did you tell anybody else?

A. And—I don't believe I told anybody else.

Mr. Taylor:

I believe that's all.

Mr. Gibson:

That's all, Mr. Hobson. Thank you.

The Court:

You can come down, Mr. Hobson. The witness can be excused unless there is objection.

(Witness excused.)

Mr. Simpson:

Your Honor, we are through with our individual witnesses, except in rebuttal. We may have two in rebuttal, two or three.

We would like to now put on some testimony—

Mr. Pettus:

I didn't understand that.

Mr. Simpson:

We are through for the time being. We will probably have a couple of witnesses in rebuttal; if we may now suspend at this time, and we would like to put on our testimony as to damages at this time.

The Court:
All right, you may proceed.

Mr. Simpson:
Mr. Breidenthal.

WILLIAM M. BREIDENTHAL, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Smith:
Q. Mr. Breidenthal, will you state your full name so the Court Reporter can get it, please, sir?
A. My name is William M. Breidenthal.
Q. I wonder if you would spell that for us?
A. B-r-e-i-d-e-n-t-h-a-l.
Q. Where do you live?
A. Louisville, Kentucky.
Q. Who are you employed by?
A. The Louisville & Nashville Railroad Company.
Q. What job do you have with the Railroad?
A. I am Assistant General Freight Agent in the Traffic Department of the L&N Railroad.
Q. Do you work in the General Offices in Louisville?
A. Yes, sir.
Q. Does your assignment constitute you a general officer of the Railroad?
A. Yes, sir.
Q. Now, how long have you been with the Railroad?
A. Some 28 years.

Q. Now, are you familiar with the strike here in Birmingham that affected this area between October 23rd and 26th, of 1955?

A. I am.

Q. You were not present here in Birmingham?

A. No, sir.

Q. All right, sir. Now, I believe that to some extent that affected the Boyles Yard?

A. Yes, sir.

Q. Are you familiar with the Boyles Yard?

A. Yes, sir.

Q. Tell these gentlemen what the Boyles Yard is?

A. The Boyles Yard is our Yard for Birmingham, and all trains moving from points north of Birmingham to points south of Birmingham on our main line, and also from points south of Birmingham to points north of Birmingham on our main line must go through the Boyles Yard.

Q. What do you call that type of installation out there?

A. It is a Terminal.

Q. A Terminal?

A. Yes.

Q. You are talking about through freight?

A. Through freight.

Q. Shipments?

A. Yes, sir.

Q. None of them just go straight on through without going into Boyles?

A. That's right.

Q. Now, during the period that Boyles was tied up in October, of 1955, did the Railroad have at various points north and south of Birmingham a number of cars of freight committed to it for handling that it

had routed through Birmingham, but hadn't gotten through here?

A. They did.

Q. Points north and points south?

A. That's right.

Q. All right.

A. During the period of the strike there continued a movement of cars at points north and south that had to move through there, they having been committed beforehand.

Q. So that the Railroad found itself when the strike started with cars that had been planned to move through Birmingham?

A. Correct.

Q. Now, did the Railroad, because of the strike, reroute those cars to go around Birmingham?

A. Yes, sir, it was absolutely necessary that we do everything in our power to fulfill our obligations to the public in moving the traffic through to the destination.

Q. All right, sir.

Mr. Taylor:

We object and move that be excluded as a voluntary statement. He didn't answer the question.

The Court:

I will exclude that gentlemen.

Q. I will ask you then if it wasn't necessary for the Railroad to reroute those cars to get the freight where it was supposed to go?

A. Yes, sir.

Q. Now, let me inquire if I may, whether the Railroad has an established practice or procedure in the

regular operation of its business of having some report made of cars rerouted when for some reason service is interrupted?

A. Yes, sir.

Q. What do you call that record?

A. It is a reroute report.

Q. Does the original or a copy of that come to the office that you are in?

A. Yes, sir.

Q. Is that made in all instances where on the line there are interferences with service that require cars to be rerouted?

A. Yes, sir.

Q. Would the same type of treatment be given to a bridge being out?

A. Yes, sir.

Q. All right, sir. Now, have you, preliminary to coming here to testify, have you segregated the reroute reports and selected the reroute reports for the Birmingham area during the period October 23rd to 26th?

A. Yes, sir.

Q. Are they here in Court?

A. They are here in Court.

Q. Where are they?

A. They are in the carrier back there in the basket.

Q. That big hopper back there?

A. That's right.

Q. In the Courtroom here?

A. Yes, sir.

Q. Some, would you say, 3 feet off the floor?

A. Yes, sir.

Q. Now, how many cars have you determined were rerouted around Birmingham because of the work stoppage during those days?

A. I have a record of 427.

Q. 427?

A. Yes, sir.

Q. Now, you say you have a record?

A. Yes, sir.

Q. Now, would you tell us in very general terms what you have done here, what this record is that you are holding in your hand here? I believe you brought this in to the witness stand with you, did you not?

A. Yes, sir.

Q. All right.

A. I have tabulated each car number, the commodity that was included in that car, the initial point of origin and the final destination of the car.

Q. All right, sir. Now this, taking a car number, commodity, point of origin, destination, did you get that information from the reroute report?

A. From the reroute report.

Q. That are here in the Courtroom?

A. That are here in Court.

Q. And the original route?

A. Yes, sir, the original route and the reroute are shown.

Q. By "original route" you mean the route that the car would have gone normally?

A. That is correct.

Q. Because the route—what do you call it, if, in railroad language, when a car is started off, it is routed from the beginning, isn't it?

A. Routed from point of origin to the destination via the road set up to haul the traffic.

Q. That is what the column you have which says "Original route" means, is it?

A. Original route, that is correct.

Q. All right, sir. Now, you have in another column over here the "Reroute"?

A. That is correct.

Q. That is the route it actually traveled?

A. That is correct.

Q. You take that information, do you, from the reroute reports?

A. Reroute reports, that is correct.

Q. I believe you have shown here the miles that were traveled by first the original route, and over here in another column the miles that are traveled on the L&N on the route as it finally went?

A. That is correct.

Q. Now, that information, I will ask you did that come from the reroute report?

A. That was compiled from the distance tables of the L&N Railroad.

Q. Do you have that?

A. I have the book right here.

Q. Now have you been able to show the difference in the miles traveled on the L&N because of the work stoppage?

A. That is correct.

Q. For each car?

A. That is correct.

Q. All right, sir. Now if the Railroad found it necessary to reroute a car, let's take an example, and you tell me whether it is a correct example or not, or whether it would be an appropriate one.

Take a car that was in Nashville and had been routed to New Orleans. Now do you have cars that were found in that position?

A. Yes, sir, we do have.

Q. What was the reroute followed by those cars?

A. Those cars were rerouted at Nashville, turned over to a connecting railroad for routing to come back to our line at Montgomery, Alabama.

Q. Where, tell us geographically, some of us are not familiar with all of the railroad lines in the area, where generally did that shipment go, did that car go?

A. That car went to Atlanta.

Q. That car went to Atlanta on what line?

A. Over the NC&StL Railway.

Q. That is a separate road from the L&N?

A. That's right.

Q. Then how did it get from Atlanta to Montgomery?

A. From Atlanta to Montgomery it generally moved over what is known as the West Point route.

Q. Is that a separate line from the L&N?

A. It is a separate and distinct line.

Q. All right. I will ask you if, where it is necessary to have a car routed over a separate road, was it necessary to pay and did the Railroad pay a part of the freight revenue received to that road for carrying out the hauling?

A. In all instances the road over which the traffic, or roads over which the traffic was rerouted, received regular pay on an agreed basis of divisions for the services performed.

Q. All right now, let me ask you this before it passes out of my mind. Did the Railroad charge its customer any extra because of the extra miles it had to be hauled?

A. No.

Q. Have you put on here in each instance the revenue that was paid over to another road?

A. Yes, sir, I have. I have figured the revenue that the L&N would have received for its services had the shipment moved as originally routed.

Then I have had the auditor to compile the actual revenue that we did get for the services that we did perform on that car.

And the difference between those two is the amount of money out of what would have been L&N revenue that we had to pay to other lines for performing this service, reroute service, for us.

Q. That was money paid to another line out of the money that the L&N would have gotten?

A. Would have gotten.

Q. Had the shipment gone through normally?

A. That is correct.

Q. Is that the figure shown in the column marked "Difference"?

A. Marked difference in L&N revenue, yes, sir.

Q. These reroute reports and records that you have worked from in compiling this summary you say are here in Court?

A. Yes sir.

Q. Do you have a report covering every one of the 427 cars?

A. Yes, sir.

Q. Would you say that those records are voluminous?

A. They are quite voluminous. The official record is, of course, very voluminous. The copied record from that which I had prepared by our auditor is a statement of some 407 individual sheets or slips.

Q. Your reroute reports that you have here, they are copies of the original reports?

A. Reroute reports, yes, sir.

The Court:

Have those particular reports been secured from the other reports?

The Witness:

On the reroutes, yes, sir. They are made up specially for reroute.

The Court:

Have they been segregated from the mass of reports here in Court, so that you could put your hands on them?

The Witness:

Yes, sir.

Mr. Smith:

Step back there and get them. Go get the reroute reports, if you will, please, sir.

The Court:

I just wanted to know if they are available to the other side.

The Witness:

These are the reroute reports on all of the cars. They are not made up in exactly the same form by each rerouting agency, but if the Judge would like to see one—

The Court:

No, I just wanted to know if you had them available. I am not asking you to go into them, just if they are available to the other side.

Q. Do you have in your hand here now as you sit on the stand a reroute report covering every one of these 427 cars?

A. Yes, sir.

Q. Have you prepared a summary of the information there that is tabulated in this six page document?

A. Yes, sir.

Q. That you have brought with you here?

A. Yes, sir.

Mr. Smith:

If Your Honor please, at this time we would like to have this identified as the next exhibit for the Plaintiff.

Mr. Pettus:

We want to object to that on the ground that it is incompetent, irrelevant, and immaterial, not shown that this witness personally prepared it, or has personally checked it. It is not shown that the records, or the records from which it was prepared are kept in the regular course of business. The record is not properly identified and the person keeping the record is not properly identified, and we object to it.

The Court:

You may have to qualify him further in the light of those objections.

(Plaintiff's Exhibit No. 2 was marked for identification.)

Q. Plaintiff's Exhibit No. 2. All right, sir, referring to Plaintiff's Exhibit 2, consisting of some six pages

now, I will ask you if that summary was prepared in part by you personally?

A. In part prepared by me personally, and all reviewed by me.

Q. You have personally checked each entry on there?

A. Yes, sir.

Q. And any work done by clerks you have personally checked?

A. Correct.

Q. And you are in the Agent's part of the System, that side of the Railroad where the reroute reports would come to you and be in your office?

A. Yes, sir.

Q. And you are the man that deals with reroute reports?

A. That is correct.

Q. And the records from which this information was taken, are all of those records regularly kept in the Railroad's business?

A. Yes, sir.

Q. And is the keeping of those records a regular part of the Railroad's business?

A. Yes, sir.

Q. You did not personally make up the reroute reports, as I understand?

A. That is correct.

Q. But the reroute reports is a permanent record kept under your custody in the Railroad?

A. Yes, sir.

Mr. Smith:

We offer it at this time

Mr. Pettus:
We object on the same ground.

The Court:
Have you individually, personally, checked that summary, and do you know it to be correct?

The Witness:
Yes, sir.

The Court:
I overrule the objection.

Mr. Pettus:
On the further ground that all of the records from which the summary was made are not in Court.

The Court:
I understand you have all of the records in that box.

The Witness:
I have the reroute reports here and the compilation furnished by our auditor showing the actual settlements. And I have the figures showing the divisions which were compiled by me and under my supervision showing the revenue that we would have received by the route the shipment was originally routed, based on tariff rates, freight collected and agreed divisions.

Q. Do you have the tariffs?

Mr. Pettus:
There is no disbursements shown on any of these reroute records, are there?

The Witness:
There is no what?

Mr. Pettus:
No disbursements. Do you have any checks here showing you paid anybody? That is shown on the record there, isn't it?

The Witness:
This record—

Mr. Smith:
You mean money—

Mr. Pettus:
Money paid.

The Witness:
This record shows the L&N money.

Mr. Pettus:
L&N money received?

The Witness:
L&N money received.

Mr. Pettus:
All right.

The Witness:
And the L&N money that we would have received had the shipment moved by the route originally planned.

Mr. Pettus:

If I may examine him on that. As I understand you, this sheet that you have prepared shows money you claim to have paid out on account of these cars, is that it?

The Witness:

The difference between what we got and what we would have got is money that was paid out to other lines.

Mr. Pettus:

Your Honor, we object on the ground these route records don't show payments to the other lines. It is one of the main things he had got on there.

Q. In the procedure by which your settlements are made with other lines, tell me which line it is that prepares the settlement?

A. The destination line prepares the settlement.

Q. All right. So that where the car did not terminate, its haul did not have its destination on the L&N, then your Company would not have made that settlement record?

A. No, sir.

Q. Isn't that right?

A. Yes, sir.

Q. But you are furnished with a breakdown of the settlement, furnished by the destination carrier?

A. That's right.

Q. All right.

A. The destination carrier then sends us an abstract of settlement that shows the money that is allowed to each road for the service that it performs in connection with that shipment.

Mr. Pettus:
Are those records in Court?

The Witness:
Those are in voluminous records on file in our Auditor of Freight Accounts Office. It would take a whole carload to get them here. There will be four or five of the shipments in one book, and there will probably be a thousand of those books.

Mr. Pettus:
We object on the ground those basic records are not in Court and have not been made available.

The Court:
They are in Louisville, are they?

The Witness:
They are in Louisville.

The Court:
Let me ask you this, do you make payments to other railroads, in other words, you handle all transactions—do they have a uniform practice with respect to that?

The Witness:
A uniform practice.

The Court:
Is that prescribed by the Interstate Commerce Commission?

The Witness:
By the Interstate Commerce Commission, yes, sir.

The Court:
These balances, the payments are made, are they made on settlements between companies?

The Witness:
Between roads, yes, sir.

The Court:
You don't individually send them a check for each car?

The Witness:
No, sir.

The Court:
Or anything like that. At the end of the month or any settlement period you settle up car balances, and all balances?

The Witness:
That is correct.

The Court:
Overruled.

Mr. Pettus:
We except. And on the further ground that there is nothing to show those settlements have in fact been made.

The Court:
Overruled.

Mr. Pettus:
We except.
Q. Now, let me ask you this, if I may.

Mr. Pettus:
May I examine this, Your Honor?

The Court:
Have you offered it?

Mr. Smith:
Yes, sir, I have offered it.

Mr. Pettus:
May I examine this just a minute?

The Witness:
Yes, sir.

The Court:
We are now at recess time for lunch. And, gentlemen, remember the Court's admonition. Be back at 1:30.

(Whereupon, at 12:15 p. m. a recess was taken until 1:30 p. m., of the same day.)

Afternoon Session, 1:30 P. M.

The Court:
Go ahead.

WILLIAM M. BREIDENTHAL, the witness on the stand at the time of recess resumed and testified further as follows:

Direct Examination.

By Mr. Smith:

Q. Now take this Exhibit 2, I believe it is, and give me the total amount shown on your summary there of revenues paid or credited to other railroad lines due to that work stoppage. I believe that would be on the last page there.

A. That total is $63,994.77.

Q. Now, that is what other lines got on those cars that were rerouted, is that correct?

A. That is what they got out of what we would have gotten.

Q. That's right. Of course, that figure as it is shown there represents what they got, and does not take into consideration the fact that the L&N in some, and perhaps many instances, hauled the car less distance than it would have done had the car gone along the original route, is that right?

A. That is correct.

Q. Have you made an allowance for that?

A. Yes, sir, I have. I have taken the miles that we saved and computed the cost of that roadhaul service, based on our average cost of roadhaul handling, 2.79 mills per gross ton mile.

Q. Have you then taken that into consideration in your tabulation there?

A. In the final tabulation I have. That is shown as roadhaul savings in the next to last column of that statement, and which is totaled on the last page also.

Q. All right, sir. Now, have you taken into consideration the extra Terminal handlings? Or let me withdraw that. These cars that have been routed through this area, many of them I take it, would not have been handled, say from Cincinnati to New Orleans, they would have gone straight through on the trains, is that right?

A. They would have gone straight through on our line. They would have gone into a Terminal and out of that Terminal, but they would not have had an interchange service with another road there.

Q. By being required to reroute these cars, did you in some instances, as shown in your summary there, have extra Terminal handling?

A. Yes, sir. For example, a car, if we rerouted it at Nashville and gave it to the NC&StL we would have to take it out of our Train Yard and take it and interchange it with the NC&StL.

And similarly when the West Point route takes it, it came back to us at Montgomery, when they got it down to Montgomery we had to have a Terminal interchange down there.

Q. I see.

A. We have shown in a column here the instances where extra Terminal, interchange Terminals were performed, and have shown the cost of those at the rate of $7.39 per car, which is our average cost of all interchange Terminals on the L&N for the year 1955.

Q. Have you taken into consideration any savings in Terminal handling that you might have had the benefit of because of rerouting?

A. Yes, sir. In several instances, as indicated on the statement, the traffic moving via the normal route as originally set up would have required that the L&N perform the destination Terminal service, that is make delivery to the industry.

In rerouting it another road made that Terminal delivery and we have set up a charge of $21.10, which is the average cost of destination Terminal handling to the L&N for the year 1955, and that cost has been credited against the difference over here so as to not overstate the amount that we are outstanding.

Q. Now, have you carried forward the figures that you have told us about where you have taken into consideration the miles hauled saved and these Terminal handlings, and do you have them developed at a figure that represents the net amount that the L&N lost on account of rerouting these cars.

Mr. Pettus:

We object to that statement.

A. Yes, sir.

Mr. Pettus:

As to what the L&N lost, as a conclusion, incompetent, irrelevant and immaterial.

The Court:

I will let him show the outlay in that regard.

Q. Tell us, if you will, the figure that is in that exhibit there that represents the net figure of the $63,000 after you made these adjustments you have told us about?

A. The net figure is $51,054.13.

Q. Now, you have taken into consideration the Terminal handlings for each car individually?

A. That's right.

Q. Is that right?

A. Yes, sir.

Q. And you have taken into consideration the road-haul miles saved for each car individually?
A. That is correct.
Q. The $51,054.13 is the total of the 427 cars?
A. That is correct.

Mr. Smith:
I believe that is all.

Cross Examination.

By Mr. Pettus:
Q. Let me have that exhibit there.
A. Yes, sir. You don't mind if I get an extra copy out so that I can refer to it.
Q. If you have one.
A. I do.
Q. Now, what is your title?
A. Assistant General Freight Agent.
Q. Assistant General Freight Agent?
A. Yes.
Q. Now, where is your office physically located?
A. Louisville.
Q. Where is your personal office?
A. It is Room 400, L&N Building.
Q. Room 400, L&N Building?
A. Yes, sir.
Q. And is that at Louisville?
A. At Louisville, Kentucky, yes, sir.
Q. Is that where all of the offices, head offices of the L&N are located?
A. No, we do have some head offices in New York.
Q. In New York?
A. Yes.

Q. But of the Louisville offices, is that in the main building at Louisville?

A. That is correct.

Q. Now, as Assistant General Freight Agent, who is your next man, in the chain of command who is your next man down, who is under you?

A. Well, there is quite a chain from the President down.

Q. I am talking about from you down.

A. From me?

Q. Yes.

A. Above me, directly—

Q. I am asking you about down first.

A. Down?

Q. Yes, sir.

A. Another Assistant General Freight Agent.

Q. Another Assistant General Freight Agent?

A. Yes, sir.

Q. Then who is below him?

A. An Assistant to the General Freight Agent.

Q. An Assistant to the General Freight Agent?

A. Yes, sir.

Q. And are these records kept in that building?

A. All of the records are kept in the building.

Q. All of them are kept in the building?

A. Yes, sir.

Q. What do you call these records that you have up here right by you on the stand, the ones they brought up here, the routing slips?

A. One is the statement of reroutes.

Q. Statement of reroutes?

A. Yes, sir.

Q. Is that kept under, by employees that are under your general supervision there?

A. Yes, sir.

Q. How far removed from you is the employees that actually keeps that record?

A. The record first comes to me.

Q. The record first comes to you?

A. Yes, and after I have finished with it it is placed on a file, and kept in our file room, readily accessible to me at all times.

Q. The rerouting?

A. That is correct.

Q. Slip?

A. Yes, sir.

Q. Now, on those reroute slips, do you handle the accounting of settlements with other railroads?

A. Not on the reroute slips.

Q. Do you handle that at all separately, is that part of your duties?

A. No, the actual settlements between railroads are handled by the Accounting Department.

Q. That is handled by the Accounting Department?

A. That is correct.

Q. Is that correct?

A. Yes, sir.

Q. These figures that you have obtained and put on this Plaintiff's Exhibit 2 are not kept by any employee under your general supervision, are they?

A. I don't know what you mean by that.

Q. Well, what I mean by that is that you do not handle the settlements, and no employee directly responsible to you handles the settlements between railroads, does he?

A. No.

Q. That is done in the Accounting Department?

A. That is in the Accounting Department.

Q. And that is an entirely different Department from what you have, isn't it?

A. That is correct.

Q. And you don't know of your own knowledge whether any settlement has ever been made, that you have set up on this paper, do you?

A. Yes, I do.

Q. How do you know?

A. Because in several instances I have had to go back and check this back from the records.

Q. In several instances?

A. They were furnished at my request by the accounting people that do have charge of the records.

Q. Have you checked each one of the 437, or whatever it is, instances here yourself personally?

A. I have checked the divisions which we were allowed, to see that we were allowed the correct proportion.

Q. I am not asking you that. Now, listen to my questions, and I think we will get along faster. I am asking you if you personally checked each settlement that was made for each one of these 437 cars, or how many ever you claim here on this exhibit,—419? Did you personally check them?

A. I did not personally check the settlement sheet.

Q. You did not?

A. I checked the statement—

Q. That's all I want to know. You didn't personally check it, that's right, isn't it?

A. That is correct.

Q. And as a matter of fact, it is not your duty to personally check that sheet, is it?

A. No.

Q. It is not?

A. Now—

Q. Now, don't argue, just answer the question.

Mr. Smith:
We object to that.

Mr. Gibson:
Let the witness finish his answer.

Q. I am just asking you if it is not your general duty to personally check those settlement sheets?

A. It is in this respect. Whenever we have a stoppage on our line and traffic is rerouted, I get these reroute reports, and I personally check to see that we get the proper revenue for the service that we performed on those.

Q. Have you personally checked each one of these?

A. Yes, sir, I have checked the revenue, the divisions used and the revenue that we were allowed in each case, and in some instances we were not allowed sufficient revenue, and in those instances the figures I showed down here as reroute revenue are the correct figures that we should have been allowed. They are more than we hold now but they represent, the difference is represented by an amount that our auditor will endeavor to get from the other line.

Q. Did you check, does that mean that you have looked personally at the settlement sheet?

A. I have not looked personally at the settlement sheet, but the report of the settlement sheet, a copy of that which was furnished me by the auditor, I have examined, and that settlement sheet, all of them I have here.

Q. Let me see one of those if you will?

A. These are figures furnished by our Accounting Department showing each road that handled the shipment, the junction at which they delivered it to us, the division, usually stated in percentages, from

which the settlement of each road was determined, and the amount now shown in the account.

Q. Now, do you have that for each one of these cars here?

A. Yes, sir.

Q. Do you have that here with you?

A. I have this here with me on each one of these sheets on each car involved.

Q. Each one of them is listed on this exhibit over here?

A. Yes, sir.

Q. Let's just take one?

A. All right.

Q. You don't have a copy of this, do you?

A. No, sir.

Q. Just take this. This is a shipment to Tacoma, Washington.

A. From Tacoma, Washington.

Q. From Tacoma, Washington to Pascagoula, Mississippi?

A. That's right.

Q. That was routed over the L&N at some point?

A. We received it from connections at East St. Louis.

Q. You picked that up at East St. Louis?

A. That's right. We were to handle it from East St. Louis by our line, from East St. Louis direct to Pascagoula.

Q. How did you reroute it?

A. At Nashville we rerouted it, we gave it to the NC&StL, who handled it to Atlanta, Georgia. The West Point route handled it from Atlanta, Georgia to Montgomery, and then they gave it back to us.

Q. What does that sheet show as the net credit that the NC&StL is entitled to for handling that car?

A. The NC&StL received $43.48 for their service.

Q. Now, when you use the word "received", do you mean that the L&N Railroad Company paid them $43.48?

A. Yes, sir. On this particular shipment it went to a destination on our line. Our auditor made the settlement with all of the roads participating in the movement, and they gave the NC&StL $43.48.

Q. Now, how often are those settlements reached?

A. Once a month.

Q. Once a month?

A. Yes.

Q. Now, suppose that the NC&StL had gotten the L&N to handle a similar shipment, say on October 3, and that the L&N had earned $43.48 for handling that shipment over its lines. And suppose those were the only two transactions. At the end of the month how would the two roads stand?

A. They would have a credit on the traffic that they handled for us, and we would have a debit on theirs, and vice versa.

Q. If those were the only two transactions?

A. That is correct.

Q. At the end of the month the L&N would owe the NC&StL $43.48, and the NC&StL would owe the L&N a like amount?

A. Yes, sir.

Q. And the two things would offset each other?

A. That's right.

Q. That's right, isn't it?

A. That is correct.

Q. Can you tell us now in the settlement how much of this amount that you got was handled by that type of offset with these other roads? Have you got your records showing that?

A. There was no such situation; we performed no similar service for the NC&StL or other roads during this period.

Q. During that month?

A. During this period, no, sir.

Q. But in later periods you did perform similar services for them from time to time, did you not?

A. Not to my knowledge.

Q. Not to your knowledge?

A. Not to my knowledge. So far as I know we have never, the NC&StL has never had to call on us in similar circumstances for performing services for them.

Q. I mean don't you route anything over the NC&StL just from time to time in the ordinary course of business?

A. Traffic is interchanged freely between our lines, and the shippers route traffic over our line and the NC&StL every day.

Q. Every day?

A. Yes.

Q. What territory does the L&N serve?

A. The L&N serves primarily the territory south of the Ohio River, east of the Mississippi River, to the Gulf Ports.

Q. Does the main line run from Mobile on north to Louisville, through Birmingham?

A. From New Orleans to Cincinnati.

Q. From New Orleans to Cincinnati?

A. That is correct.

Q. All right.

A. And we also have a main line that runs from Cincinnati to Atlanta, and also a main line that runs from Memphis to Nashville

Q. Now, on this chart here you have the initials "WPR" as another.

A. That is the West Point route.

Q. The West Point route?

A. Yes, sir, in the last page of that you will find all of those abbreviations explainend.

Q. All of them are explained?

A. Yes, sir.

Q. I haven't had a chance to get that far along.

A. Yes, sir.

Q The West Point, WPR is the West Point route?

A. Yes, sir.

Q. Where does that run?

A. It runs from Augusta, Georgia to Selma, Alabama. Of course, they have some branch lines too, but their main line runs from Augusta, Georgia through Atlanta, from Atlanta to Montgomery, and thence to Selma, Alabama.

Q. Where does it touch the L&N lines or make connections, at Selma and anywhere else?

A. They connect with us at Montgomery, Alabama, at Selma, Alabama, and at Atlanta, Georgia.

Q. Now, the NC&StL is the Nashville, Chattanooga & St. Louis?

A. Yes, sir.

Q. Is that right?

A. That is correct.

Q. And are those the towns served by that road?

A. That road runs from Paducah, which is on the Ohio River, through Nashville to Atlanta, Georgia, through Chattanooga. Generally speaking that is their main line, although they do have a line from Memphis to Nashville, and numerous branches.

Q. The WPR. or the West Point route, and the NC&StL are wholly owned subsidiaries of the L&N Railroad?

A. No, sir.

Q. Are they not?
A. No, sir.
Q. What is the stock relationship?

Mr. Smith:
We object to that.

The Court:
I sustain the objection to that.

Mr. Pettus:
We except.

Q. Isn't the West Point and the NC&StL known as feeder lines to the L&N?
A. No, sir.
Q. Do you know that expression, "Feeder lines"?
A. I wouldn't say that they were, no, sir.
Q. You say a good deal of the traffic is routed over those roads, isn't it?
A. Yes, sir. We also route a good deal of traffic over nearly every railroad in the South.
Q. Do you have the checks or any records here in the Courtroom showing payments of any amounts by the L&N Railroad Company to any of these other roads shown on Plaintiff's Exhibit 2?

The Court:
Is this a question of payment? They would be liable, if there is a liability to pay, it would be just the same, wouldn't it?

Mr. Pettus:
I want to know if it has been paid.

The Court:

What difference would it make if they owed the other railroads for it?

Mr. Pettus:

If it has not been paid they can get credit for it.

The Court:

Credit wouldn't change the situation. They would lose, if they got credit—I mean if they put out the service.

Mr. Pettus:

The service might not be the dollars' equivalent, may it please the Court. If you owe a man ten dollars and work for him at the rate of ten dollars a day that is one thing. But they might not be charged but a dollar a day or something of that sort. When you can repay in service, that is a different thing from money.

The Court:

Well, you have to pay for services though, don't you?

Mr. Pettus:

Well, it may not be the dollar equivalent though.

The Court:

Well, I sustain the objection.

Mr. Pettus:

We except. That's all.

Mr. Smith:
That's all. Come down. You are through. Can we excuse this witness?

The Court:
Yes.

Mr. Smith:
I understand I formerly offered the exhibit and it was received.

The Court:
I am not sure whethere you did or not.

Mr. Pettus:
We renew our objection to it.

The Court:
It has been offered.

Mr. Smith:
It was offered, objections made to it, and the Court overruled the objection.

The Court:
I overrule the objection.

Mr. Pettus:
We except.

Mr. Smith:
Do you have any objection to excusing this witness?

Mr. Pettus:
We have no objection.

The Court:
Unless there is objection you will be excused.

(Witness excused.)

Mr. Smith:
Mr. Thompson.

WILLARD H. THOMPSON, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Smith:
Q. State your name, please, sir.
A. Willard H. Thompson.
Q. Willard?
A. Willard H. Thompson.
Q Mr. Thompson, where do you live?
A. I live in Birmingham.
Q. Are you employed?
A. I am employed by the Louisville & Nashville Railroad Company.
Q. What is your job?
A. Assistant Trainmaster.
Q. Here in Birmingham?
A. Here in Birmingham.
Q. Do you recall the occasion in 1955, October, of 1955, when there was a strike at the Boyles Yard here?
A. I do.
Q. Were you in Birmingham during the period of that strike?

A. I was.

Q. Now, at the present time you are assigned in Birmingham as Assistant Trainmaster, you say?

A. Yes, sir, that's right.

Q. Would you tell us whether you have within your duties in that position contacts with the agencies in the Birmingham area, the Railroad Agency Offices?

A. Yes, I have general supervision over the agencies in my assigned territory, which is between Decatur and Montgomery, and the Alabama and Birmingham Mineral Subdivisions.

Q. All right now, let's be sure we have got that area in mind. That is the L&N's various installations south of Decatur and north of Montgomery, including that Alabama Mineral Line, which is a branch line?

A. That is correct.

Q. In which direction generally does that run?

A. The Alabama Mineral runs east.

Q. A loop?

A. A loop that runs to Gadsden, Anniston, Talladega and Sylacauga.

Q. And comes back into the main line where?

A. Calera.

Q. At Calera?

A. Yes, sir.

Q. Do you have another branch line in the area that you covered?

A. Yes, north of Birmingham, the Birmingham Mineral, which runs west from the main line. It operates to Bessemer, Ensley, Thomas, and down to Tuscaloosa.

Q. The Alabama Mineral is one of the branch lines, and the Birmingham Mineral the other?

A. That is correct.

Q. Within the area that is under your supervision I will ask you if your duties give you general supervision over the agency records that are kept at the various agency offices?

A. It does.

Q. You don't work at any of the agencies?

A. No, I have just general supervision.

Q. Now, are you familiar with the operation of an agency office?

A. Yes, sir, I am.

Q. Have you ever worked in an agency office?

A. Yes, when I started my railroad career I was an agent in the beginning.

Q. How long have you been with the Railroad?

A. 13 years.

Q. Did you prepare a chart or tabulation preparatory to testifying in this case that contains information relating to the various agencies within that area?

A. Yes, I did.

Q. I think probably the best thing to do is for you to tell us what information you obtained from the agencies records.

Mr. Pettus:

May it please the Court, we object to this. Here is a paper in Court that we have never seen before, there is no original record. It is one he has prepared, no records apparently available here to check it by or anything else, and we object to it.

The Court:

I overrule the objection. He hasn't offered it yet. Are you going into how it was compiled?

Mr. Smith:
Yes, sir.

Mr. Pettus:
We except.

Q. Let me take one sheet of your chart here.
A. Sure.
Q. And hold that there. Now in preparing this record, Mr. Thompson, did you personally visit the agencies of the L&N Railroad within the area that you have just described to us?
A. Yes, I did.
Q. And did you obtain from those records at the various agencies certain information which you have compiled here?
A. Yes, sir, I did.
Q. Did you bring here to Court, and have here in the Courtroom, all of the records from which you obtained that information?
A. I do. It is in the rear of the Courtroom.
Q. Those records are here?
A. Yes, sir.
Q. Tell us, without giving us any figures, tell us what information you got with respect to each of the agencies.

The Court:
How many of those records are there? Let's find out.

Mr. Smith:
All right, sir.

Q. How many records are there? Tell the Court and jury if you will something about these records, what do they consist of?

A. These records consist of reports which are normally made by our agents or their forces of all inbound shipments and all shipments that are forwarded.

These records are prepared daily, and in the case of the shipments forwarded, it is on the monthly report. And the information that I have secured from them was taken from three different classes of reports.

There was the daily abstract report, which is a summary of every waybill, covering each shipment that comes into the station. Now this summary shows the weight and the revenue involved.

The monthly report, which I spoke of, is what we call the freight forwarding report, which lists each shipment separately, showing the amount of weight and revenue for each shipment. Now it is made as a monthly report, but kept up currently.

Now those are the reports which I have here to the rear of the Courtroom.

Q. Now how many of them, do you have any judgment as to how many pages of papers all of those reports and documents consist of?

A. They are quite voluminous. It would be rather hard to estimate it. In some cases they were larger agencies, and there are as many as several thousand. In case of the smaller agencies, of course, it would be confined to possibly a hundred and fifty to two hundred.

Q. Would the documents that you obtained that information from number into the thousands?

A. Yes.

Q. And do you have all of them here?
A. I do.

Mr. Pettus:
May it please the Court, we want to interpose an objection here to the fact that he has only taken a segment of one Company, certain agencies in it, he hasn't made the same audit throughout the entire scope of the L&N operations.

The Court:
Well, he hasn't developed that at this phase of the case to that extent yet. I overrule the objection.

Mr. Pettus:
We except.

Q. What have you shown, taking you back to where we were, what have you shown with respect to each of these agencies in this Birmingham area, in the way of the general information? I don't want you to tell us any figures at this time, but just tell us what the information consists of.
A. The information that I have on this report is broken down on a daily basis, showing the total tonnage in pounds, and the dollars and cents amount of revenue, of both inbound and outbound shipments at each station.
Q. I see. You have reported inbound and outbound cumulatively?
A. That is correct.
Q. Put them together?
A. I put them together.
Q. What period does this cover, for the year 1955?

A. This period covers the nine days preceding the work stoppage, and nine days following, as well as the three days in which the work stoppage was in effect.

Q. This covers a twenty-one day period that included the work stoppage?

A. That is correct.

Q. And for each agency you have shown the amount of tonnage in pounds and the dollar volume of revenue nine days in advance of the strike, during the strike, and nine days after the strike, is that correct?

A. That is correct.

Q. Now I notice that you have several sheets of paper here. Now just so we will all understand what this is, have you broken that down by subdivisions of this part of the Railroad?

A. Yes, I have broken it down into separate areas.

Q. All right, tell the jury what they are.

A. The area which you have in your hand here covers the Alabama Mineral Subdivision which we discussed, that runs east through Gadsden, Anniston, Sylacauga to Talladega. That covers all of the shipments in that area.

Q. All right, sir.

A. On the next sheet I prepared a summary of all the agencies of the Birmingham Mineral. That is the one that we said runs through Ensley, Woodward, Bessemer, and Tuscaloosa.

Q. All right, sir.

A. On this next sheet I have the summary covering the area from Birmingham to Montgomery. That includes Birmingham and stops at Elmore.

Q. All right.

A. The next sheet I have covers the summary of the area from Decatur to Birmingham, but not including Birmingham.

Q. All right.

A. Now I have four sheets on which I compiled these figures. Then I made a recapitulation sheet which is broken down into these four subdivisions which I just stated. I have them listed in the horizontal and perpendicular manner here. Then at the side, over to the right, I have the grand total of the tonnage and revenue by days for this area in which this was compiled.

Q. All right. Now, Mr. Thompson, did you personally make the totals and tabulations that are shown on that sheet?

A. Yes, sir.

Q. On those sheets?

A. Yes.

Q. You went to the various agencies personally and examined these records, is that correct?

A. That is correct.

Q. And you have brought up here today the records that you worked from?

A. Yes, sir.

Q. And collected from the agencies all over the System, or the affected part of the System?

A. Yes, sir.

Mr. Pettus:

We object to that, as to the "affected part of the System", may it please the Court.

The Court:

Overruled.

Mr. Pettus:
We except.

Q. Is that right?
A. That is correct.
Q. Now the records that you have told us about that you worked from at these various agencies, are they records that are kept by the Railroad in the regular course of its business?
A. They are.
Q. It is part of the regular business of the Railroad to keep those records?
A. That is correct.
Q. And you have brought them here, and they are in the Courtroom?
A. That is correct.

Mr. Pettus:
We would like to question him on voir dire there, may it please the Court.

The Court:
All right.

Mr. Pettus:
You don't keep those records yourself, do you?

The Witness:
I do not.

Mr. Pettus:
They are not kept under your supervision or control?

The Witness:
They are under my general supervision.

Mr. Pettus:
They are under your general supervision?

The Witness:
That is correct.

Mr. Pettus:
Each one of the records that you examined?

The Witness:
That is correct.

Mr. Pettus:
How often do you make a check of them?

The Witness:
I would say approximately once or twice each month. I generally try to get there, it just so happens, whenever my work carries me to this particular station I make a spot check of these various records and reports.

Mr. Pettus:
Are you in the Auditing Department?

The Witness:
No, I am not.

Mr. Pettus:
You are not in the Auditing Department?

The Witness:
No.

Mr. Pettus:
That's all.

The Court:
All right, go ahead.

Mr. Smith:
We at this time offer the tabulation.

The Court:
What does that tabulation show with respect to the damage, if any?

Mr. Smith:
This is sort of a—it will have to be connected up, but this tabulation will show the dollars of revenue day by day for the nine days prior to the strike, during the strike, and nine days after the strike. That is gross revenue. This witness I will state to the Court, of course, is not to testify as to the profits that would have been earned on that, it is impossible.

The Court:
Subject to being connected up, I will permit it to come into evidence.

Mr. Smith:
We expect to connect it up. And we offer at this time each of the sheets.

The Court:
All right.

Mr. Smith:
I believe, being separate, it might be better to mark them separate exhibits.

Mr. Pettus:
We want to interpose an objection to these documents that are offered in evidence on the ground that the original records, while they are said to be available here in the Courtroom, have not been shown to be available, not shown to be any connection between these summary sheets and the records. It is not shown to be kept in the regular course of business. And on the further ground that it is incompetent, irrelevant and immaterial, and it is not shown to be any item of recoverable damage in the case.

The Court:
You want to ask another question before I rule on the objection?

Mr. Smith:
Yes, sir.

The Court:
All right.

Q. Now, Mr. Thompson, I will ask you if you have also shown on this tabulation the same information for the comparable period of three weeks in the month of October in 1954?
A. Yes, I did.

Mr. Smith:
All right, sir.

The Court:
I overrule the objection.

Mr. Pettus:
We object on the further ground it calls for a comparison. We except.

Mr. Taylor:
We except.

(Plaintiff's Exhibits Nos. 3 to 7, inclusive, were marked for identification.)

Q. Now, Mr. Thompson, you were here in Birmingham personally during the strike you told me?
A. Yes, sir, that's right.
Q. And I believe prior to that time you had been assigned duties at another city and were sent here for that period, is that right?
A. That is correct.
Q. All right. Now, I will ask you if you know of any other event or occurrence during that three day period, other than the stoppage, that would have adversely affected the revenues of the L&N Railroad in the area that you have told us about?

Mr. Pettus:
We object to that, incompetent, irrelevant and immaterial.

A. I do not know of any other.

Mr. Pettus:
Wait a minute.

The Court:
Overruled.

Mr. Pettus:
We move to exclude the answer, until we get our objection in.

The Court:
The answer was you did not know?

The Witness:
The answer was I did not know of any other reason.

Mr. Pettus:
I move to exclude the answer.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Do you know of any bridges that were out in the area that is covered by your report here?
A. No, sir.
Q. Do you know of any track troubles that caused the Railroad to stop or shut down?
A. No, sir.
Q. All right, sir. Answer out, so the Court Reporter can hear you.
A. No, I did not know of any.
Q. Now, I will ask you if during that period, the latter part of October, is a period that is more or less consistent so far as the volume of business on the L&N is concerned?

Mr. Pettus:

We object to that. It calls for a conclusion or opinion of the witness, invades the province of the jury, incompetent, irrelevant, and immaterial.

The Court:

You mean from year to year?

Mr. Smith:

No, sir, I mean from week to week, any reason for any variation, or is it consistent, or is there any occasion for it to vary up and down from week to week.

The Court:

I overrule the objection.

Mr. Pettus:

We except.

A. It is consistent.

Mr. Pettus:

We move to exclude the answer on the same ground.

The Court:

Overruled.

Mr. Pettus:

We except.

Q. Do you know of any seasonal factors that would affect the business from week to week in the fall of the year, in October?

Mr. Pettus:

We object to that on the ground the witness is not properly qualified, and it calls for an opinion and conclusion.

The Court:

Overruled.

Mr. Pettus:

Incompetent, irrelevant, and immaterial. We except.

A. My answer to that question is I don't know of any reason for variation.

Mr. Pettus:

I didn't hear him.

The Court:

Speak out.

A. My answer to that was that I don't know of any seasonal business that would increase it.

Mr. Pettus:

We move to exclude the answer on the same ground.

The Court:

Overruled.

Mr. Pettus:

We except.

Q. Now, just so we will be clear here, I am looking at the recapitulation which is Plaintiff's Exhibit No. 3, and I note that the days of the 24th, 25th, and 26th, they would be the days that would reflect the freight differential?

A. That is correct.

Q. Have been outlined here in pen and ink. You did that? That was on the exhibit?

A. That was on the exhibit. I used that for my own reference in case I was called upon.

Q. All right. I wonder if you would give me the total revenue for the week. You have totaled for all of the weeks there?

A. Yes, I have them totaled by weeks.

Q. Will you give me the total revenue for the week ending on the 21st of October?

A. The total for the week of October 15, 1955 was $1,072,113.57.

Q. That is the 15th to the 21st?

A. 15th to the 21st.

Q. All right. One million—

A. $1,072,113.57.

Q. Give me the total for the next week.

A. Total for the week of October 22, 1955 was $519,000—

Q. Is that the 22nd to 28th?

A. 22nd to the 28th, that's right.

Q. All right.

A. That was $519,405.21.

Q. Give me the total for the week after that.

A. The following week, the week of October 29 to November 4, 1955 was $1,237,810.76.

Q. $810.76?

A. That's correct.

Q. All right, now.

Mr. Byrd:

Your Honor, we object to these figures.

Q. The figure for the week before was $1,072,113.57?

A. Yes, sir.

Q. For the week that this three day period was in, and that includes I assume four other days, is that right?

A. That's right.

Q. It was $519,405.21?

A. Yes, sir.

Q. The week after $1,237,810.76, is that correct?

A. That is correct.

Q. Have you made any computation—well, that's all right. Those are the figures, however, that represents the total revenue in dollars from the area that you described to us earlier for nine days prior to the work stoppage and nine days afterwards?

A. Yes, sir.

Q. Your totals are by weeks, I believe?

A. That's right, by seven day periods.

Q. Now, you told us about the four sections,—may I call them sections, or subdivisions that you have treated separately there, and you as I understand it have shown the agencies on each one of them?

A. That's right.

Q. Did any trains operate on any of those subdivions from the 23rd to the 26th of October?

A. Yes, there were several trains operated on outlying points.

Q. On what subdivisions?

A. Well, I can better describe the trains themselves.

Q. Just tell me about the trains themselves?

A. All right. We operated on Monday, to the best of my recollection.

Q. All right.

A. We operated No. 22, which is a northbound local on the Division between Montgomery and Birmingham. We operated it from Montgomery to Calera and turned this crew back to Montgomery, and tied the crew up.

Q. All right.

A. On the Alabama Mineral subdivision we operated Train No. 92, which is the local freight train between Anniston and Gadsden, and turned this crew back to Anniston.

And we operated No. 53 and 54, which are two locals on the south end of the Alabama Division between Anniston and Columbiana. Both of those trains operated on Monday.

Now, to the best of my memory the operation out of Montgomery was confined to one day. In other words, No. 22 was operated to Calera and turned back on Monday only. We didn't operate any more crews on that subdivision on Tuesday and Wednesday.

On Tuesday and Wednesday we did operate 53 and 54 between shops and Columbiana, which is Anniston shops to Columbiana.

And to the best of my memory we did operate No. 91, 92 in turnaround service, as I told you between Anniston and Gadsden.

Those were the only trains which we operated in this area.

Q. Except for No. 22 out of Montgomery were all of those trains on the Alabama Mineral Division?

A. That is correct.

Q. Do you have a separate sheet there for the Alabama Mineral?

A. Yes, I do.

Q. So that the Alabama Mineral Division will show for this period some freight handled, by tonnage and by dollars, for the days in question?

A. That is correct.

Q. That has been brought forward into this recapitulation?

A. That is correct.

Q. Was there anything handled on the Alabama Mineral that got off of the Alabama Mineral Division?

A. No, sir.

Q. Did it get into the main line anywhere?

A. Not to our main line at all.

Q. It was handled between local points on the Alabama Mineral?

A. That is correct.

Q. That you were able to continue to operate?

A. That is correct.

Q. None of that had to come into Boyles?

A. No, there were no trains operated into Boyles.

Q. Now except for that, the trains you have told us about on the Alabama Mineral and the No. 22 out of Montgomery, the rest of the area that you have described earlier to us was out of business during this period?

A. That is correct.

Mr. Smith:

I believe that's all.

Cross Examination.

By Mr. Pettus:

Q. Mr. Thompson, these agencies that you have been talking about, they are all on the L&N Railroad?

A. That is correct.

Q. You have not been talking about any different Railroad?

A. No.

Q. It is all part of the same System, is that right?

A. That is correct.

Q. That is the one that runs up to Cincinnati, I mean it is all one corporation, isn't it?

A. Yes, that is correct.

Q. The profits for that Railroad for 1955 were $24,600,000.00, weren't they?

A. I don't know.

Q. Are you in the Accounting Department?

A. No, I am not.

Q. You don't know what profits there were for that year?

A. I do not.

Q. Or the year before for the Railroad?

A. I do not.

Q. In these figures you have given us,—it costs something to run a Railroad, doesn't it?

A. It does.

Q. These gross revenue figures that you have given us here, you have to offset them against what it costs to run the railroad to find out where you come out, don't you?

A. That is correct.

Q. In your chart there, Mr. Thompson, every now and then you run into a blank day, like for instance there is October 15 there at the Decatur subdivision, zero, zero, and does that mean that there was no tonnage handled there?

A. What particular station was that?

Q. That is Decatur substation, on your recapitulation here.

A. Oh, yes. I might tell you that there are smaller agencies which are only five day operations. I mean by that Monday through Friday, so therefore on Saturday and Sunday there would be days in which no business was handled at all, so far as our agency is concerned.

Q. In other words, the Railroad shut them down that day, did it?

A. There is no agency on duty.

Mr. Pettus:

I think that's all.

Mr. Smith:

That's all, Mr. Thompson.

The Witness:

Thank you.

The Court:

Does this also reflect the tonnage for the period there?

Mr. Smith:

Yes, sir.

The Witness:

Yes, sir, it does. That wasn't brought out but it does reflect the tonnage.

The Court:

Do these receipts, for instance, actually reflect tonnage for those weeks or does that actually reflect receipts on tonnage perhaps for prior weeks?

The Witness:
It reflects tonnage for these weeks.

The Court:
Tonnage for those weeks?

The Witness:
Yes, sir, that is correct.

The Court:
All right.

Mr. Smith:
May he be excused?

The Court:
Yes, unless there is objection.

(Witness excused.)

Mr. Smith:
Call Mr. Carl Bratton.

CARL BRATTON, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Smith:
Q. Is this Mr. Carl Bratton?
A. Yes, sir.
Q. That is B-r-a-t-t-o-n?
A. Yes, sir.

Q. Where do you live?
A. Louisville, Kentucky.
Q. By whom are you employed?
A. Louisville & Nashville Railroad Company.
Q. What is your job with them?
A. I am Assistant to the Comptroller.
Q. Assistant to the Comptroller?
A. Yes, sir.
Q. With offices, head office in Louisville?
A. Yes, sir.
Q. Are you a general officer of the Railroad?
A. I am.
Q. Is the Comptroller the head of the Accounting Department?
A. Yes, sir.
Q. Now, you have seen a copy of the report that Mr. Willard Thompson made up, I believe?
A. Yes, sir, I have.
Q. You are familiar with this?
A. Yes, sir.
Q. You didn't make it up?
A. No, sir.
Q. Or participate in making it?
A. No, sir.
Q. But you know what it purports to show
A. Yes, sir.
Q. All right. Now, in the office that you were in, that you are a member of, and general officer of, the Accounting Department, is that where the over-all, Systemwide accounting of the L&N Railroad is done?
A. Yes, sir, it is.
Q. You do not have general accounting offices scattered throughout the Railroad?
A. We do not.
Q. Now, these figures that are shown on Mr. Thompson's records here, I believe—

Mr. Pettus:
Will you tell us what page that is?

Mr. Smith:
That is on the recapitulation for the week ending the 21st of October, 1955, $1,072,000—excuse me. that's so much money I can't say the figures. That is one million—

The Witness:
Seventy-two thousand.

Mr. Smith:
Seventy-two thousand one hundred thirteen dollars and fifty-seven cents. We have written that figure on the board.
And the following week, $510,405.21. The next week $1,237,810.76.

Q. Now, can you as an accountant and general officer in the Accounting Department of the Railroad determine from that information how much of that revenue would have been retained by the L&N Railroad?
A. Yes, sir, I can.

Mr. Pettus:
We object to that.

Q. All right, sir.

Mr. Pettus:
Incompetent, irrelevant, and immaterial, the witness not properly qualified.

The Court:
Are part of your duties to figure the cost and profit of the Railroad?

The Witness:
Yes, sir, it is.

Mr. Pettus:
It is not shown to be uniform throughout the System.

The Court:
What was your question? I don't exactly remember the question.

Mr. Smith:
I asked him if he was able to determine from the figures shown here how much—I think probably I am—I will withdraw the question. I think probably I was premature.

Q. Now, Mr. Bratton, let me ask you this question, assuming that, looking at those figures there, and assuming that those figures are correct, and that there was no event or occurrence or condition on the Railroad that affected the business of the Railroad in the Birmingham area during the period of this work stoppage from October 23rd to 26th, of 1955, and assuming that the business of the Railroad is more or less constant and consistent throughout the month of October, can you from that form any opinion as to the amount of over-all gross revenue that the Railroad lost as a direct result of this work stoppage?

Mr. Pettus:
We object to that, incompetent, irrelevant, and immaterial, the witness is not properly qualified.

The Court:
Did you finish your objection?

Mr. Pettus:
What is that?

The Court:
Have you finished your objection?

Mr. Pettus:
No, sir, hypothesized on facts not in evidence, it is not shown that there is a uniform rate of profit throughout the System, it is not shown what expenses were incurred in this area, it does not exclude other factors involved in this case from having taken place, and no casual connection shown between the issue in this case and the answer called for by the question.

Mr. Smith:
I have not asked him about profits yet. I just asked him if he can, assuming these facts I have hypothesized—

The Court:
I overrule the objection.

Mr. Pettus:
We except.

Q. Can you, sir?
A. Yes, sir.

Q. Do you remember the question?
A. Yes, sir.

Mr. Pettus:
We move to exclude his answer on the same ground.

The Court:
Overruled.

Mr. Pettus:
We except.

A. On the October 19—

Mr. Pettus:
Is this another question, or is he just going ahead with this?

The Witness:
I am answering the question that he asked.

The Court:
Now, he is answering the question. I think you will have to ask another question.

Mr. Smith:
All right.

Q. In your judgment then what amount of gross revenues, or what loss of gross revenues would you as an accounting officer of the Railroad say the Railroad suffered due to this work stoppage?

Mr. Pettus:
We object on the same ground.

The Court:
I overrule the objection.

Mr. Pettus:
We except.

The Court:
Of course, the loss of gross revenue is not—

Mr. Smith:
Is not the measure of damages.

The Court: —
Yes. I assume this is leading up to an attempt to establish loss of profits.

Mr. Smith:
That is certainly right.

The Court:
Overruled.

Mr. Pettus:
We except.

A. Between the week of October 15-21, and the week of October 22-28, that is the difference between the two weeks we would have lost gross revenue amounting to $366,413.00.
Q. You mean the revenues that—

Mr. Pettus:
We move to exclude the answer on the same ground.

Q. Give me that figure.
A. $366,413.17.

Mr. Pettus:
We move to exclude that answer on the same ground.

The Court:
Gross—I don't know how that is arrived at.

Mr. Smith:
I will clarify that.

The Court:
It is a preliminary matter. I overrule the objection for the time being.

Mr. Pettus:
We except.

Q. That figure there I notice is substantially smaller than between these two weeks here. I will ask you if in making this, giving me this figure, that you have just given of $366,413.17, if you have taken out any revenue that would not have been retained by the L&N Railroad?
A. I have.
Q. That is interline?
A. I have taken out the revenue that would be applicable or would be incurred to other roads.
Q. So that this would be the amount of revenue that the L&N lost in your judgment because of the work stoppage that would have been retained by the L&N?

Mr. Pettus:
We object to that.

A. That's right.

Mr. Pettus:
Incompetent, irrelevant, and immaterial, the witness not properly qualified, hypothesizes facts not in evidence.

The Court:
I think the question is did they lose that amount of gross revenue.

Mr. Smith:
Yes, sir.

The Court:
And not whether they would have.

Mr. Smith:
I think Your Honor is entirely right.

Q. Is that the amount that the Railroad lost in gross revenues during that period?
A. Yes, sir.

Mr. Pettus:
We object to that.

Q. On account of the work stoppage?

Mr. Pettus:
We object. The witness answered a little too quickly. I want to get in an objection. It is incompetent,

irrelevant, and immaterial, the witness is not properly qualified, not shown any data or any evidence or any papers or anything else upon which the witness bases his opinion.

The Court:
I overrule the objection.

Mr. Pettus:
We except. We move to exclude the answer on the same ground.

The Court:
Overruled.

Q. Now, Mr. Bratton, that figure that I have written up there, $366,413.17, that is not profit, is it?

A. No, sir.

Q. Now, does the Railroad in its Accounting Office which you are one of the general officers of regularly keep records as a part of which is the reporting of cost figures and revenue figures and the development of profit figures?

A. We do.

Q. Do you have with you any kind of accounting report?

A. Yes, sir, I have a copy of our annual report to the Interstate Commerce Commission.

Q. Who prepares that report?

A. That is prepared by the comptroller's office, of which I am a member.

Q. Then the L&N Railroad prepares that?

A. Yes, sir.

Q. And makes the report to the Interstate Commerce Commission?

A. That is correct.

Q. Is that report, after it has been prepared and filed, does it continue to be a record of the L&N Railroad?

A. Yes, sir.

Q. And is it used in the day to day operations of the Railroad?

A. Very much so.

Q. Is the making of that report a part of your regular business with the Railroad?

A. Yes, sir.

Q. It is made in the regular course of business of the Railroad?

A. Yes, sir.

Q. You have there the annual report made to the Interstate Commerce Commission for the year of 1955?

A. Yes, sir.

Q. Is that correct?

A. That is correct.

Q. All right, sir. Can you refer to that report, Mr. Bratton, and tell us what portion of every dollar of operating revenues in the year 1955 the L&N Railroad retained after paying all operating expenses, that is the profits on operations?

Mr. Pettus:

Now, we object to that as incompetent, irrelevant, and immaterial. The primary data is not in Court. It is not shown that this situation in Alabama was the same as it is in Ohio or Kentucky or anywhere else, and that it is incompetent, irrelevant, and immaterial.

The Court:

Overruled.

Mr. Pettus:
We except.

Q. Go ahead.
A. Yes, sir.
Q. Do you remember the question?
A. I do, yes.

Mr. Pettus:
We move to exclude the answer on the same ground.

Q. Have you reduced that to a percentage?
A. Yes, sir, I have.
Q. Now, what is that percentage?

Mr. Pettus:
We object to that on the same ground, that there is no evidence in Court upon which the witness can base that opinion.

The Court:
Well, I think this, probably, he has raised a point of objection here. Was the revenue on this involved section the average revenue or was it less than the average revenue?

Mr. Smith:
We say to the Court that, of course, that would be something to be inquired about, and might go to the credibility of it, but I say this—let me ask the witness this question.

Q. Mr. Bratton, how long have you been with the Railroad?
A 39 years.

Q. How long in the Accounting Department?

A. 39 years.

Q. 39 years in that department?

A. Yes, sir.

Q. How long have you been familiar with all the operations of the Railroad, its various Divisions and Subdivisions?

A. For that period of time.

Q. Throughout the years, I take it?

A. Yes, sir.

Q. And with the revenues and the operating expenses?

A. Yes, sir.

Q. As to the individual parts of the Railroad?

A. Yes, sir, that is true.

Q. Is there any occasion that you know of, or any reason that you know of why this figure that you have told us, that you have for the over-all operations and profits of the Railroad as related to each dollar of revenue would not be a reliable figure as applied to the area affected by this work stoppage?

Mr. Pettus:

We object to that. It is calling for an opinion or conclusion of the witness.

The Court:

I sustain the objection to the form of the question.

Q. Now, Mr. Bratton, let me ask you if in your opinion, in the light of your knowledge of the Railroad business and its accounting methods and procedure that the figure that you say, you tell us for the System as a whole, if it would be applicable to this part of the System in the Birmingham area?

A. I see no reason why it would not.

Mr. Pettus:
We object to that.

The Court:
I think it is a question of whether or not it is, or in his judgment it is, rather than seeing no reason why.

Mr. Smith:
Yes, sir. I think that is correct.

The Court:
I sustain the objection to that.

Mr. Pettus:
May I get in an objection to that, on the same ground that we objected to the other question?

The Court:
Yes.

Mr. Pettus:
We except.

The Court:
I granted the motion as to that particular answer.

Mr. Pettus:
Oh, I didn't understand Your Honor.

The Court:
I told him to rephrase his question.

Mr. Smith:
I haven't got the figure, but I am, I am going to ask about this figure that if you haven't told us, tell us now, Mr. Bratton.

Q. Is this figure a figure that would be an accurate and reliable figure as applied to the Birmingham area?

Mr. Pettus:
We object to that.

A. In my opinion it was.

Mr. Pettus:
Mr. Bratton, if you will just wait until I can get in an objection.

Mr. Smith:
Give Mr. Pettus an opportunity to object.

The Court:
It is a leading question, the way it was asked, Mr. Smith.

Mr. Pettus:
I want to object to that.

The Court:
He has asked a leading question. I sustain the objection to the leading question.

Mr. Smith:
All right.

Q. Mr. Bratton, you told us that you have, or that in your report there you can determine what portion of every dollar of operating revenue is retained by the Railroad after paying all operating expenses?

A. That is correct.

Q. Do I understand it correctly?

A. That is correct.

Q. That is for the System as a whole?

A. Yes, sir.

Q. Would that be accurate as applied to the area of the Railroad between Decatur and Montgomery, Alabama?

Mr. Pettus:

We want to object to that on the ground that the witness is not properly qualified, he has not made any investigation, and that there is no data or any original records brought in to support any opinion of that sort.

The Court:

Of your own knowledge do you know that Mr. Bratton?

The Witness:

In my judgment I could see no difference.

The Court:

Do you keep separate accounting so far as profits are concerned with respect to each Division of the road?

The Witness:

No, sir, we do not.

The Court:
Does the Interstate Commerce Act require you to do that?

The Witness:
No, sir, it does not.

Mr. Pettus:
Your Honor, it is just a uniform accounting system as to the whole road. I don't see how any witness is capable of making or giving an answer on this line of questions.

The Court:
Well, we don't know whether or not a certain Division was losing money. If they did, I'm sure it would be taking some steps to alter the situation.

Mr. Pettus:
May it please the Court, I mean the topography between here and Ohio is so different, and the population, there are so many factors involved that unless there has been some separate data compiled by the Company, there is just no way that any one individual can have that knowledge. In other words, it has got to be a separate investigation, which so far has not come out from this witness.

The Court:
I don't believe there is anything before the Court right at this time. Go ahead with the interrogation and I will rule on the matter.

Mr. Smith:
I believe the witness said that there would be no difference, that it would apply to this area.

The Court:

I don't know if that was the last question that he answered or not. The way he answered the question I excluded it. You had better ask him the question again to be sure.

Mr. Smith:

All right, sir.

Q. In your judgment would the Systemwide profit factor, or does the Systemwide profit factor apply accurately to the Birminiham area?

Mr. Pettus:

We object to that on the vround that the witness has no information upon which to base an answer, and it is affirmatively shown that the Company keeps no records showing any comparison between areas.

The Court:

That goes to the weight of the evidence I think probably.

Mr. Pettus:

We except.

The Court:

I overrule the objection.

Mr. Pettus:

We except.

A. In my judgment there would be no difference between the Birmingham Division and other parts of the System.

Mr. Pettus:
We move to exclude the answer on the same ground.

The Court:
I overrule the objection.

Mr. Pettus:
We except.

Q. Now, would you tell us what the proportion, in percentage, is?

Mr. Pettus:
We object to that on the same ground.

The Court:
Let him finish. I don't believe he has, yet.

Q. What percentage of every dollar of revenue that is taken in is retained by the Railroad, or was in 1955, after payment of all operating expenses, Mr. Bratton?

Mr. Pettus:
We object to that on the same ground as last assigned.

The Court:
Overruled.

Mr. Pettus:
We except.

A. 21.98 per cent

Mr. Pettus:
I move to exclude the answer on the same ground.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Mr. Bratton, do I understand that after paying, that out of the gross revenue you pay all expenses of operation, and the Railroad retained, after that, 21.98 per cent?

A. That's right.

Q. Now, that's not the ratio of profit to investment?

A. No, sir. Our ratio—

Q. That is considerably less, I suppose.

A. Our rate of return on investment has averaged only 4.81 per cent for the past 10 years.

Q. We won't be confused about that. This is 21.98 per cent?

A. That's right.

Q. Of the $366,413.17 that would be retained by the railroad after payment of its operating expenses?

A. That is correct.

Q. Would you be good enough to give me a total, I don't know whether you have been able to figure that out, I doubt if you have—will the Court permit the witness to compute that for convenience?

The Court:
Well, for the convenience of the jury, yes.

The Witness:

I have it here, I have computed that.

Q. What is it?

A. $80,537.62.

Q. 62 cents?

A. Yes, sir.

Q. That is all that would be, or that is in your judgment the amount of profit the L&N Railroad lost on account of the business that it did not handle on account of this strike?

A. That is correct.

Mr. Smith:

I believe that's all.

The Court:

Let me ask you this. I don't understand how you got the $366,413.17. Is that an average, did you take the average between the week preceding and the week after, and then deducting the 519 from the average? Or how did you arrive at that?

The Witness:

Well, I established a percentage of the total revenue retained by the L&N, and the portion that goes to foreign roads on interline traffic. That percentage is 66.29 retained by the L&N and 33.71 per cent goes to foreign roads.

The Court:

You had to take some over-all figure though to make your computation, didn't you?

The Witness:

Yes, I did. I multiplied the $1,072,113.67—no, I beg your pardon, strike that will you, please. I first took the difference between $1,072,113.57 and $519,405.21, leaving $552,708,000.00.

The Court:

You don't mean million, you mean thousand, don't you? You said $552,000,000.00.

The Witness:

Oh, did I? I beg your pardon. $552,708.36. Then I applied against that $552,708.36 the percentage of 66.29, which gave me $366,413.17.

The Court:

In other words, you took the less of the two figures there, you took the week before instead of the week after?

The Witness:

That is correct.

The Court:

And then you based your total revenue on that week, is that correct, the week previous?

The Witness:

The week previous, yes, sir.

The Court:

Then you took out the revenue that you would have paid the other roads?

The Witness:
Yes, sir.

The Court:
Then you took away the revenue that you actually had, is that right?

The Witness:
That is correct.

The Court:
And the difference is $366,413.17?

The Witness:
Except that I first took out of the revenue which we actually had $519,000.00 that the other roads, of course, would get.

The Court:
Of, yes. You took out the other roads' proportion, their proportionate part of $519,000.00?

The Witness:
Yes, sir.

The Court:
I see.

Mr. Smith:
All right, sir, let me put that total up there on the top.

By Mr. Smith:

Q. Now I believe you say that the figure you gave us was 21.98 per cent, which was the figure for the year 1955?

A. Yes, sir, that is correct.

Mr. Smith:

I believe that's all. These gentlemen may want to ask you some questions.

Cross Examination.

By Mr. Pettus:

Q. Mr. Bratton, you say you have no records where you keep the operating revenues and expenses of the L&N differently by states?

A. We keep the operating revenues and expenses, but we do not carry that down to net railway operating income.

Q. You don't carry that down to operating income?

A. No, sir.

Q. What do you mean that you keep it separately in general, just explain that?

A. We keep it separately for reporting to the various State Railroad Commissions.

Q. To State Railroad Commissions?

A. Yes, sir.

Q. Is that done on the gross receipts and gross disbursement basis?

A. The revenues, all intrastate revenues are assigned to states. All interstate revenues are assigned to states on the basis of mileage over which they travel.

Q. In those records that you keep for Alabama, do you show separately the interstate and the intrastate revenues?

A. Yes, sir.

Q. But you show all of it? Take the interstate revenues on a shipment originating in Cincinnati, how do you show that in Alabama?

A. On a mileage basis.

Q. On a mileage basis?

A. Yes, sir.

Q. How much trackage is there in Alabama?

A. I beg your pardon?

Q. How many miles of track are there in Alabama?

A. Of main tracks there are 1,156-1/2 miles.

Q. What is the track maintenance expense for Alabama?

A. Strike that answer, please, sir—yes, that is correct, the mileage operated, the main track mileage operated in Alabama is 1,156-1/2.

Q. By main track, what do you mean by that?

A. All tracks of the main line and branch lines that are classified as first main track, in other words. It is analogous to miles of the road.

Q. What was the mileage maintenance in Alabama?

A. I don't have the figures.

Q. You don't have the figures there?

A. No, sir.

Q. Is that in the paper that you have got there?

A. No, sir.

Q. What was the mileage maintenance in Tennessee?

A. I don't have that.

Q. How many miles are there in Tennessee?

A. 892.85.

Q. What is your gross pay roll for Tennessee?

A. I don't have that figure.

Q. What is your gross pay roll for Alabama?

A. I don't have that figure.

Q. In other words, you don't have those?

A. No, sir.

Q. You don't have the operating expenses broken down by states, is that right?

A. No, sir, I don't.

Q. You don't have that?

A. No, sir.

Q. And you don't have either any operating expenses or operating revenues broken down for this exhibit that was prepared by Mr. Thompson, do you?

A. No, sir.

Q. For those substations there?

A. No, sir.

Q. Do you know what state taxes you paid in Tennessee?

A. We paid $1,948,985.00 in 1955.

Q. That is shown though for taxes, but you don't have the other expenses, the other state-by-state expenses, is that correct?

A. That is correct.

The Court:

Is that Tennessee or Alabama?

The Witness:

That was for Tennessee.

The Court:

Oh, Tennessee?

The Witness:
Yes, sir.

Q. How much taxes did you pay in Alabama?
A. $1,743,100.00.
Q. How much in Tennessee?
A. $1,948,985.00.
Q. In other words, you paid a million nine-hundred thousand in Tennessee and a million seven hundred thousand in Alabama, is that right?
A. That is correct.
Q. You had less trackage in Tennessee?
A. Yes.
Q. Than in Alabama, is that correct?
A. We have more main tracks. I don't know about the total trackage.
Q. Now, the trackage that runs up in Tennessee, does that run through hilly country?
A. I am not familiar with the terrain.
Q. You are not familiar with that?
A. No.
Q. How about the trackage in Alabama, is that through hilly country?
A. Not so far as I know.
Q. Are you familiar with it?
A. Not too familiar.
Q. You are not familiar with that?
A. No.
Q. Well, the cost of maintaining trackage in hilly country is different from what it is in flat valley country, isn't it?
A. It is out of my line, I can't answer that question.
Q That would affect the profit, wouldn't it, if you had an expenseive track to maintain?
A. I assume that it would.

Q. You think it would?

A. Yes.

Q. And do you know what the gross tonnage that you hauled in Alabama was for the year 1955?

A. No, sir, I do not.

Q. Do you know what the gross tonnage is for Tennessee?

A. No, sir.

Q. Or Kentucky?

A. No, sir.

Q. Are you familiar with the trackage in Kentucky?

A. Partially.

Q. And are you familiar with the terminals in Kentucky that you have there?

A. Some of them.

Q. Terminal facilities; are they identical with the terminal facilities you have in Tennessee?

A. I would say they are.

Q. You say they are absolutely identical?

A. Oh, no, I can't say they are absolutely identical. That is more of an operating department question than it is an accounting question. I couldn't answer that specifically.

Q. Have you got the maintenance cost of terminals in Kentucky?

A. Do we have maintenance costs?

Q. Do you have that in your paper that you have there?

A. No, sir, I don't.

Q. Do you have the maintenance costs in Alabama?

A. No, sir.

Q. Then, Mr. Bratton, you don't know whether the operating costs are the same in Alabama or Kentucky or not, do you?

A. Not 100 per cent, no, I don't know that.

Q. Well, you don't know within quite a wide percentage, do you?

A. No, I don't.

Q. And you keep the records for the Company on a Systemwide basis, don't you?

A. Partially so; and partially on a state basis.

Q. You say partially so, and partially on a state basis?

A. Yes, that's right.

Q. When you say partially on a state basis, I have asked you if you had certain important operating expenses, and you told me you didn't have them. What do you mean, you don't have them?

A. I mean I don't have them with me.

Q. You don't have them with you?

A. Yes.

Q. And they are not in Court?

A. I do have them by states. I thought I made that clear.

Q. Now, as I understand it, Mr. Bratton, in these reports you file with the states, that is just a summary report, is that right?

A. That is a summary report of the revenues and the expenses. But as I said before it does not carry it to a point where I could determine the net profits or earnings out of each dollar of gross revenue.

Q. You couldn't do it even on those records if you had them, is that correct?

A. No, sir, I could not.

Q. You couldn't get any accurate figure on it?

A. That's true.

Q. Now the net profit of the L&N Railroad for 1955 was $24,600,000.00, wasn't it? Is that what your report shows?

A. That is net income after all fixed charges and other deductions.

Is that after taxes or before taxes?

The Witness:

That is after taxes?

The Court:

That is after taxes?

The Witness:

Yes, sir.

Q. What is that figure now?

A. The net income is $24,637,846.00.

Q. That is after all taxes, and that is for the System as a whole?

A. Yes, sir.

Q. Now that compares with the same figure for the preceding year of $18,900,000.00, doesn't it, for 1954?

A. Yes, sir, it does.

Q. Does any computation that you have made reflect, on the System as a whole, the effect of any claimed loss on account of this three day walkout in your 1955 figures for the Company?

A. No, sir.

Mr. Smith:

What is that, claimed loss?

Mr Pettus:
Claimed, claim-ed. May it please the Court, we move to exclude this witness' testimony on the basis of this examination, that he hasn't got data to sustain any of the opinions that he has expressed.

The Court:
I overrule the objection.

Mr. Pettus:
We except.

The Court:
Or I overrule your motion, rather.

Mr. Pettus:
That's all we have.

Mr. Smith:
That's all, Mr. Bratton.

The Witness:
Thank you.

(Witness excused.)

The Court:
Gentlemen, we are going to take a twenty minute recess.

(A short recess was had.)

The Court:
Call your next witness.

Mr. Smith:
I wonder if we could excuse Mr. Bratton and Mr. Thompson who have testified.

The Court:
Yes, they may be excused unless there is objection.

Mr. Pettus:
We excuse them.

Mr. Smith:
Mr. Major.

E. H. MAJOR, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Smith:
Q. State your name, please, sir.
A. E. H. Major.
Q. Where do you live?
A. Louisville, Kentucky.
Q. Is it Louisville, Kentucky?
A. Yes, sir.
Q. You are in the head office of the L&N up there?
A. Yes, sir.
Q. What is your job with the L&N?
A. I principally maintain records of all cars on or moving over the Louisville & Nashville Railroad, and of L&N's cars that are not on our Railroad.
Q. What is your title?
A. Superintendent of Car Service.
Q. Superintendent of Car Service?

A. Yes, sir.

Q. How long have you been with the Railroad?

A. Too long; 49 years.

Q. How long have you been Superintendent of Car Service?

A. 20 years.

Q. How long have you been working in that general field of railroad work, that is relating to cars?

A. Well, you might say all of my experience has been with transportation that is connected with cars, agency, yards.

Q. Yes, sir. You have had agency experience?

A. Yes, sir.

Q. And yard experience?

A. Yes, sir.

Q. All right, sir. Are you familiar with the strike in Birmingham in 1955 in October?

A. Well, I know they had one.

Q. Yes, sir. You recall the occasion I am talking about?

A. Yes, sir.

Q. Now, I will ask you to tell us if the Railroad had, at the time of the stoppage here, principally at Boyles, if the Railroad had a number of cars belonging to other railroads on the L&N line?

A. Yes, sir.

Q. Now is the L&N Railroad required to pay other lines a per diem charge for those cars?

A. Yes, sir.

Q. What is that charge?

A. $2.40 per car day.

Q. Per car day?

A. Yes, sir.

Q. Now, of course, one car might be tied up one day, and one might be tied up two or three days, but whatever it is, it is per car day?

A. Yes, sir.

Q. $2.40, is that right, sir?

A. That is correct, on railroad owned cars.

Q. Do you have in Louisville in your office a record at all times of all cars on the Railroad?

A. Why, yes, that is after sufficient time has elapsed for the reports to reach me.

Q. At any one moment you don't have any record at your finger tips that would determine what cars are on the road, is that right?

A. Not at that exact moment, no, sir.

Q. Now, have you made a study or investigation here to determine how many car days these cars were tied up as a result of this strike here in Birmingham in October, of 1955?

Mr. Pettus:

We object to that on the ground that that is no separate item of recoverable damages, and would be included in the profits, if any.

Mr. Smith:

I don't think counsel understands. It is in the pretrial order as a separate item.

The Court.

It is in the pretrial order.

Mr. Pettus:

We except to that.

The Court:
Overruled.

Q. Go ahead.
A. Will you please read that question?

(The question was read.)

A. Yes, sir.
Q. Now, you have told us—

Mr. Pettus:
We move to exclude the answer.

The Court:
Are you talking about cars belonging to other roads?

Mr. Smith:
Thank you, Your Honor. That's right.

The Court:
All right.

Mr. Pettus:
We move to exclude the answer on the same ground.

Q. Is that right?
A. It is other roads, as well as our own cars.
Q. Do you have them segregated?
A. That is correct.
Q. All right, let's talk about the other roads now. We are talking about those alone at this point. Mr. Major, would you say that you did not have in your office any record of each one of these cars at that time?

A. Yes, sir.

Q. I don't want to go into detail unless these gentlemen care to ask you further questions about it, but will you tell us what you did to put your hands on the cars that actually were involved in this tie-up here?

A. I secured the Yard train sheets for each train out of Nashville southbound to the Birmingham Division; those in and out of Boyles; in and out of Montgomery for the period October 23 through October 30; and out of Sibert Yard in Mobile for the period October 20 through the 30th as my basic information from which I was able to produce the number of days, I would say the minimum number of days that cars were delayed by reason of this work stoppage.

Q. All right, sir. Now, in doing that you came out with a number of car days that you determined the cars were tied up due to the strike, is that right?

A. Correct.

Q. How many car days was that?

Mr. Pettus:

We object to that, incompetent, irrelevant, and immaterial.

The Court:

That, of course, goes to the ultimate figure here in issue. It would be perhaps better if he has these figures to show how many cars were involved. Do you have it broken down that way?

The Witness:

No, sir. That question has come up since I have been in Birmingham, Judge, and we just didn't count

them by the cars. We computed the days on each car and made up a total from that. I have the car days as a total for the other roads' cars separate from the L&N Railroad Company's owned cars.

The Court:

Well, it would not include cars that were for instance moving between Mobile and Montgomery?

The Witness:

No, sir. I have only totaled the delays when the cars were standing still, and I allowed a minimum of one day for them to get through a terminal.

The Court:

And you took the Yard sheets in all of the Yards involved?

The Witness:

That is correct.

The Court:

Do those Yard sheets reflect how long the cars were there?

The Witness:

No, sir, they reflect the car number. It gives me the car number and initial and where it was moving from and to, etc. And then when I tabulated this all together I saw how long a car stayed at a terminal. And I know whether it is a through car or a car destined to that terminal.

A car that was destined to the affected terminal, I did not charge any delay at that destination terminal, because I had no records to support the delay

that would be chargeable to this difficulty as against that which would be chargeable to the consignee. That is not included in my figures.

The Court:

Well, the records do reflect the delays, is that correct?

The Witness:

The records reflect the delays at the terminals en route to the destination, not at the destination.

The Court:

If a car was delayed on a switch somewhere between, it would not affect that, would it?

The Witness:

I didn't take any cars that were delayed other than at a terminal en route to the destination.

The Court:

All right.

Q. Mr. Major, in giving us this information, or making this study, do I understand that you have eliminated any cars except those in trains going from terminal to terminal?

A. Just through cars.

Q. Through cars?

A. Yes, sir.

Q. You have not included any cars that might have been lying on somebody's siding, or being at the customer's place for loading or anything of that kind?

A. No, sir, even though they were cars that were being delayed because we couldn't place them due to this difficulty.

Q. You made no effort, or they are not included?

A. No, sir.

Q. You didn't include those?

A. No, sir.

Q. Do you have the train sheets from which you worked here? In other words, the Judge asked you about the number of cars?

A. Yes, sir.

Q. Are you telling him you just haven't totaled the number of cars, but you just came out with car days?

A. That is correct.

Q. Tell me the car days on the foreign roads' cars.

Mr. Pettus:

We object to that as incompetent, irrelevant, and immaterial, not shown the number of cars involved, and based on the assumption of this witness as to the cause of the delay, whether routine or anything else.

The Court:

That goes to the weight of the evidence. You can cross examine him about that. Overruled.

Mr. Pettus:

We except. No item of recoverable damage.

A. 5,758 car days on other roads' cars, which, at the $2.40 per diem rate produces $13,819.20.

Mr. Pettus:

We move to exclude that answer on the same ground.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Now did the L&N Railroad, under its agreement with the other roads, get charged for that much money on account of those cars?
A. Yes, sir, I pay it to them automatically.
Q. You make settlement with other roads regularly?
A. Yes, sir, monthly.
Q. That figure would have been in the various settlements with the various affected roads?
A. Yes, sir.
Q. I am not going to ask you about the L&N cars, Mr. Major, I am going to ask you, however, about this.
A. Yes, sir.
Q. If the L&N was unable to accept any cars which were offered to it, or were sought to be turned over to it by other roads, because of the stoppage, what was the situation on those cars, Mr. Major?
A. Yes, sir.

Mr. Pettus:
We object to that, it calls for a conclusion and opinion of the witness, unless he has personal knowledge.

The Court:
You mean were other cars tendered to the L&N?

Mr. Smith:

Yes, sir. I want to show that the L&N actually was charged and paid other roads another figure for cars that it was unable to accept, that it was expected and obligated to accept.

The Court:

I overrule the objection.

Mr. Pettus:

We except.

Q. Go ahead, Mr. Major.

A. Yes, sir, we paid other roads at Birmingham $1,662.14.

Q. Give me that figure just one more time, please, sir.

A. Yes, sir.

Q. That is $1,600—

A. $1,662.14 per diem on cars that we were unable to accept from them when offered, due to this labor situation.

Mr. Pettus:

We move to exclude that.

The Court:

Was that freight that was consigned over your line?

The Witness:

It was cars coming to our line that we, either loaded or empty, that we were obligated to accept. The rules say that when a railroad does not accept such cars, those that the road holds, the other road is holding, at 11:59 p. m., the road in difficulty must

pay per diem to that holding road for those cars that it holds. Is that clear?

Mr. Pettus:
We move to exclude all of those answers on the same ground.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Now, Mr. Major, the cars that figured in that total that you have just given us of $1,662.14, are any of those cars reflected in the per diem charges that you told us about just prior to that time?

A. No, sir, that is an entirely separate and distinct item.

Q. Did you actually make settlements with the other roads for the inability of the L&N to accept those cars?

A. I did.

Q. Do you have here with you correspondence and records showing the approval of those settlements with the other roads?

A. I do.

Q. They are available to anybody that wants to see them?

A. Yes, sir.

Mr. Smith:
That's all. Your witness.

Cross Examination.

By Mr. Pettus:

Q. Do you mean that money was actually paid out to the other roads for these cars?

A. Yes, sir.

Q. Suppose that the other roads owed the L&N for some cars that they had, was that offset?

A. Each road reports to the other road, and drafts are drawn by our comptroller, one road against the other.

Q. In other words, if the NC&StL owed the L&N for a certain number of cars, car days, per car, that it had held, that would be offset against this figure that you have given us here, is that correct?

A. Not any more than my salary is by freight charges that the L&N Railroad earns.

Q. Well, let me ask you this, during this same period did the NC&StL owe some per diem on cars to the L&N?

A. Certainly.

Q. It did, didn't it?

A. Some L&N cars were on the NC&StL, and the NC&StL paid the L&N for those each day they were on their railroad.

Q. Each day they were on there?

A. Yes.

Q. And if the NC&StL owed the L&N fifteen dollars and the L&N owed the NC&StL thirty, there would just be fifteen dollars to strike the transaction off, wouldn't it, or did each of them give a check?

A. Not in my department; I don't know what the comptroller does. I don't understand so. I understand they draw drafts.

Q. They draw drafts for the full amount, and don't offset any, is that right?

A. Not according to my understanding, but I don't handle that, friend.

Q. You don't know whether these were actually paid or not?

A. Yes, sir, I know they are paid, because if they hadn't, they would have been right on my neck. I reported them down for the drafts, and I am sure they were paid.

Q. Did anyone ever report to you that they were paid?

A. No, sir, the report comes to me when they are not paid.

Q. I mean you never did hear any report that these had not been paid, did you?

A. That's correct.

Q. Routinely, cars—what are they called, these charges that you are talking about, this per diem charge, is that demurrage?

A. No, sir, demurrage is between railroads and shippers.

Q. Between the railroad and shipper?

A. Yes, sir.

Q. What do they call it between railroads?

A. Per diem.

Q. Per diem is all they call it, is that right?

A. Yes, sir, or car hire, either one you want to term it.

Q. Well, the per diem on the cars is incurred in just ordinary operation of the road, isn't it?

A. Oh, yes, the same as any other expense.

Q. Cars routinely, the L&N routinely incurs per diem charges on cars of other railroads, doesn't it?

A. Certainly.

Q. What have you done to eliminate those cars from the per diem figure up there in the $13,819.00?

A. I don't understand your question.

Q. Well, what have you done to eliminate cars of other railroads that are included in the $1[illegible]9.00 figure there where those cars were delayed just due to a routine delay in returning them?

A. I never included that delay, routine delay in there. It's not in the $13,000.00.

Q. How did you eliminate it?

A. By allowing a minimum of a day for cars to get through a terminal, which usually gets through in a matter of minutes or three to six hours.

Q. In other words, you eliminated by one day—

A. A minimum of one day.

Q. Isn't it a matter of routine that cars frequently just stay around as much as a week in various terminals?

A. Not through cars, my friend, no, sir.

Q. Haven't there been just routine charges of other railroads, for other railroad cars, where they have stayed around on the L&N tracks or in the L&N Yards for a week, and you paid per diem on them?

A. If a shipper delays a car in unloading it, you can call that routine. I pay for every day the car is on our railroad, period, regardless of the cause.

Q. This is not the only time you have ever paid any per diem, is it?

A. I pay it every day.

Q. You pay it every day?

A. Yes, sir.

Q. And sometimes cars are delayed more than one day, are they not?

A. As I said, of course, shippers and consignees delay them. Sometimes we will have some cars de-

layed for distribution, yes, sir. Those, incidentally are—I didn't take into consideration.

Q. How about shop cars?

A. Except in extreme rare cases they accrue per diem the same as if they were not shopped.

Q. Did you do anything to eliminate shopped cars?

A. No, sir, I did not.

Q. In this computation?

A. No, sir, I did not.

Q. You didn't have any information upon which to make any elimination?

A. I didn't endeavor to go into that because I knew it was minor, and I was making a very liberal allowance by excluding all cars that were handled in switching service.

For example, here at Birmingham, Alabama, we do a world of switching, as you probably have heard. None of those cars are included in my $13,000 odd dollars, although you must know that there were quite a number of them delayed.

Q. Were there about 2,500 people out here in this strike that you say you know something about?

A. I don't know.

Q. You don't know how many there were out?

A. No.

Q. What is the average wage per day that the average employee gets, from sixteen to twenty dollars?

A. I don't handle pay rolls, I couldn't tell you.

Q. You know though, don't you?

A. I hear various things. I know only about the ones that I have immediate charge over.

Q. Well, you have been with the Railroad 49 years, haven't you?

A. That's right.

Q. You keep up with things?
A. I have never handled pay rolls.
Q. You keep up with wages, don't you?
A. No, sir.
Q. Don't you know the average wage is between sixteen and twenty dollars?
A. I know that many of them get that much, yes, sir.
Q. Get that much?
A. Yes, sir.
Q. And you know that while these men were out those three days that they were not paid, don't you?
A. No, sir, I don't know a thing about that.

Mr. Pettus:
That's all.

Re-Direct Examination.

By Mr. Smith:
Q. Mr. Major, these cars that you told us about in that total, they were cars on through billing, they were through cars?
A. That's right.
Q. Made up in trains?
A. They were through cars, billed from one point to another.

Mr. Smith:
That's all. Thank you. May Mr. Major be excused?

The Court:
Those are cars of other railroads on through routes?

The Witness:
That's right. We have left out anything about the L&N cars.

Mr. Smith:
Yes, sir. There were L&N cars tied up?

The Witness:
Yes, sir, naturally.

Mr. Smith:
But you have allowed nothing for the use of those cars?

The Witness:
That's right. There was a heavy demand for cars at that time.

Mr. Smith:
All right, sir.

The Court:
Without objection this witness can be excused.

Mr. Smith:
All right, sir. You can be excused, Mr. Major. Thank you.

(Witness excused.)

Mr. Simpson:
The Plaintiff rests, Your Honor.

Mr. Smith:
May I write the total of this up here?

The Court:
Yes.

Mr. Pettus:
Your Honor, we have a motion we would like to make at this time.

Mr. Simpson:
Will you give us two copies of it?

Mr. Pettus:
I don't think I have another one. I haven't got but one here. I'll try to get you one.

The Court:
I will reserve ruling on it. You can renew it at the end of the evidence.
Call your next witness.

Mr. Pettus:
Mr. Southerland.

HOWARD EUGENE SOUTHERLAND, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:
Q. Will you please state your name?
A. Howard Eugene Southerland.
Q. Are you one of the Defendants in this case?
A. Yes, sir.
Q. Where do you live?

A. 4166 51st Avenue North, Birmingham, Alabama.

Q. Are you employed?

A. Louisville & Nashville Railroad.

Q. Louisville & Nashville Railroad?

A. Yes, sir.

Q. What do you do?

A. Locomotive engineer.

Q. Are you a member of any Brotherhood?

A. Yes, sir.

Q. Railway Brotherhood?

A. Brotherhood of Locomotive Firemen and Enginemen.

Q. And what is your average daily rate of pay?

A. $18.71.

Q. $18.71?

A. Yes, sir.

Q. Do you recall the occasion that the testimony has been about of this walkout in October, 1955?

A. Yes, sir.

Q. On the Sunday, October 23, did you work that day?

A. I got off at 7:30 on Sunday morning.

Q. At 7:30 Sunday morning?

A. Yes, sir.

Q. Now, the meeting that has been referred to as the Parker meeting, at Mr. Parker's house, did you attend that meeting?

A. Yes, sir.

Q. About what time did that meeting take place?

A. About 4:00 or 4:30.

Q. If you can recall the names of the men that were at that meeting, mention as many as you can recall?

A. H. K. Parker, J. B. Otts, Mason Weldon, Letchman, J. M. Brown, Jr., McCutcheon That's about all I can call offhand right now

Q. Was the meeting held at Mr. Parker's house?

A. Yes, sir.

Q. Whereabouts in the house was the meeting?

A. In the basement or the garage apartment.

Q. And were there men there from all crafts, or other crafts than the firemen?

A. Yes, sir.

Q. Will you just tell in a general way what you recall being said at that meeting?

A. Well, there was just an open meeting for the public, anyone could go that wanted to. There wasn't any closed doors or anything.

Q. What was the subject that was discussed?

A. Three hostler helpers, I believe it was.

Q. Three hostler helpers jobs?

A. Yes, sir.

Q. Just tell what you recall about what was said, and if you recall who said it just state who it was.

A. Every one was kind of in a small group together talking, and I think at one time Mr. Otts said that he had taken the subject up with Mr. Paschal, and it would be handled as the contract called for.

Q. It would be handled as the contract called for?

A. Yes, sir.

Q. All right.

A. I said "I think that's the proper thing to do."

Q. You said you thought that was the proper thing to do?

A. Yes. Mr. Kennedy said the same thing.

Q. And do you recall anything else particularly that was said at the meeting?

A. No, sir, that's about all I know of.

Q. Was there talk in the small groups going on throughout the meeting?

A. Yes, sir

Q. About how long was that, if you recall?

A. I don't know, about an hour I reckon, something like that.

Q. Do you recall what time you left approximately?

A. About 5:00 o'clock I reckon.

Q. About 5:00?

A. Yes, sir.

Q. You say you got there about 4:30, is that right?

A. Yes, sir.

Q. Tne meeting took about a half hour, didn't it?

A. Yes, 30 or 40 minutes.

Q. 30 or 40 minutes?

A. Yes, sir, something like that.

Q. About that?

A. Yes, sir.

Q. Did anybody go out of the meeting with you, I mean do you recall about that, how you left the meeting?

A. No, I went out as the group did?

Q. You went out as the group did?

A. Yes, sir.

Q. The meeting was breaking up when you went out?

A. Yes, sir.

Q. Where did you go after the meeting?

A. I went home

Q. You went home?

A. Yes, sir.

Q. Now, were you working that night or the next day?

A. No, I was supposed to work that night. I laid off.

Q. You laid off?

A. Yes, sir.

Q. What time did you lay off?

A. About 5:30 or 6:00 o'clock, I don't know exactly what time it was.

Q. How did you go about laying off?

A. Just called the Engine Dispatcher and reported off.

Q. Was the Engine Dispatcher that evening Mr. Jordan that testified here?

A. Yes, sir.

Q. Did you talk to him?

A. Yes, sir.

Q. Do you recall what your conversation with Jordan was or not?

A. I reported off sick. I had a headache and a cold, and he said "I guess so, everybody else is laid off."

Q. He said he guessed everybody else was lying off?

A. Yes, sir.

Q. All right.

A. Yes, sir.

Q. How long did you stay at home?

A. I don't know, about an hour or two hours.

Q. Then were did you go?

A. I went to Rex's Barbecue.

Q. About what time did you arrive at Rex's?

A. About 7:00 o'clock, I guess.

Q. And when you arrived there did you see anybody that you recall knowing, or not?

A. No one in particular.

Q. No one in particular?

A. No, sir.

Q. Were there many or few people there?

A. Well, there was several people around there.

Q. How long did you stay at Rex's, if you recall?

A. I stayed there until about 10:00 o'clock or 10:30, somewhere along there.

Q. About 10:00?

A. Yes, sir.

Q. Did you remain in the vicinity of Rex's, or did you leave the vicinity after you first arrived?

A. I stayed right there at the barbecue stand.

Q. Stayed right there at the barbecue stand?

A. Yes, sir.

Q. The Yards are located near the Rex's Barbecue stand?

A. Across the road.

Q. Just across the road?

A. Yes, sir.

Q. Did you ever go across the road onto the Company property?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Do you recall any time that evening when you saw any L&N employees leaving the premises?

A. Yes, sir.

Q. About what time was that?

A. About 8:30 or 9:00 o'clock, somewhere along there.

Q. And how many of them did you see? In other words, how large a group was there coming out?

A. Oh, they all just, just all come walking out.

Q. They all just came walking out?

A. Yes, sir, and t' e lights went out.

Q. Were they all walking along peaceably?

A. Yes, sir.

Q. As they walked out?

A. Yes, sir.

Q. Did you leave the Rex's Barbecue about 10:00?
A. Somewhere along there.
Q. Some time in that vicinity?
A. Yes, sir.
Q. I see.
A. I might have left a little earlier, I don't remember.
Q. Where did you go after you left Rex's?
A. I went home.
Q. Did you stay at home that evening?
A. Yes, sir.
Q. Did you sleep at home?
A. Yes, sir.
Q. On Monday, what time did you get up, do you recall?
A. Oh, about 7:30 I imagine.
Q. And did you go down near the Boyles Yard on Monday at any time?
A. Yes, sir.
Q. Where did you go?
A. I went back to Rex's Barbecue.
Q. You went back to Rex's Barbecue?
A. Yes, sir.
Q. Do you recall what time you arrived there?
A. Well, it was between 7:30 or 8:00 or 8:30, somewhere along there, early part of the morning.
Q. How long did you stay at Rex's, do you recall?
A. From then until maybe 11:00 o'clock; I don't remember.
Q. Did you stay in the cafe at that time or go outside?
A. No, I went all around there, out in front and inside too.
Q. Around the front and on the inside too?
A. Yes, sir.

Q. Do you recall anyone on Monday that you saw there?

A. No particular one, no, sir.

Q. Is Rex's where the L&N employees congregate?

A. Yes, sir.

Q. Normally?

A. That is what we call, might call it the hang-out for all of the employees on the Railroad.

Q. That includes the nonoperating employees, switchmen, firemen, and so on, is that right?

A. Yes, sir.

Q. Then that Monday afternoon, do you know where you were then?

A. I went back down there.

Q. You went home for lunch, did you?

A. Yes, sir.

Q. Then you went back down to Rex's?

A. Yes, sir.

Q. Did you stay around there throughout the afternoon?

A. Yes, sir.

Q. Monday night, do you recall where you were then?

A. Well, I went home and had supper, and then I went back again.

Q. You stayed at Rex's?

A. Yes, sir.

Q. In other words, you spent Monday at Rex's did you?

A. Yes, sir.

Q. How about Tuesday?

A. Well, I went down there Tuesday.

Q. Down to Rex's on Tuesday?

A. Yes, sir.

Q. And Wednesday, do you recall where you were Wednesday?

A. I imagine I went down Wednesday, I don't remember.

Q. In other words, you spent most of the time during the work stoppage at Rex's?

A. Yes, sir, that's right.

Q. When did you return to work, do you know?

A. It was either Wednesday night or Thursday night, I don't remember.

Q. Now, Mr. Southerland, you are charged in this complaint here with, or that you did conspire and combine to interfere with Plaintiff's said business, and pursuant to said conspiracy or combination did intentionally and without just cause interfere with and prevent Plaintiff from carrying on said business, in that you caused other employees of Plaintiff by means of intimidation or threats of force or violence not to perform their duties for the Plaintiff.

Did you personally do any of those acts charged in that complaint?

A. No, sir, I didn't encourage no one to stay out, or come out, or go back, either way.

Q. Did you authorize anybody else to do any of those acts charged in the complaint?

A. No, sir.

Q. Do you know of anybody else being guilty of those acts charged in the complaint, and after knowing that did you ratify anything that they did, along the lines charged in that complaint?

A. No, sir.

Mr. Pettus:

That's all.

Cross Examination.

By Mr. Simpson:

Q. Mr. Southerland, you were not sick when you went to Mr. Parker's that afternoon, were you?

A. Yes, sir, I had a cold and I felt a little bad.

Q. You didn't intend to lay off, you didn't intend to let that cold keep you from staying on duty, did you, when you went to Parker's?

Mr. Pettus:

We object to that, what he intended.

The Court:

I sustain the objection.

Q. Did you have any plans, or had you made any statement to anybody that you didn't intend to stay on the duty board?

A. No, sir.

Q. After you had been to Mr. Parker's then you called up and laid off?

A. Yes, sir.

Q. As sick?

A. That's right.

Q. Now then, you say you did not conspire with anybody to shutdown the L&N Railroad. You went Mr. Parker's meeting?

A. Yes, sir.

Q. And the L&N Railroad was shutdown completely at Boyles from about 9:00 o'clock Sunday night until about 9:00 o'clock Wednesday night following, wasn't it?

A. Yes, sir.

Q. You were at Rex's, and you saw that, didn't you?

A. Yes, sir.

Mr. Simpson:

I think that's all, Mr. Southerland.

The Court:

All right. You are excused.

(Witness excused.)

Mr. Pettus:

Mr. Duncan.

JAMES H. DUNCAN, called as a witness on behalf of the Defendant, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Taylor:

Q. Will you state your name, please, sir?

A. James H. Duncan.

Q. What is your occupation, Mr. Duncan?

A. Well, I am employed by the L&N Railroad, and then I practice law. I have two occupations.

Q. Yes, sir. Were you employed by the L&N Railroad on October 23, 1955?

A. Yes, sir.

Q. I will ask you first if you recall the work stoppage which occurred in October, 1955?

A. I do.

Q. Were you on duty the Sunday night, which I believe was October 23, the day the work stoppage, or the night that the work stoppage occurred?

A. I was on duty, yes, sir.

Q. Now, what was your job at that time?

A. Chief Clerk.

Q. What time did you go to work that Sunday?

A. 3:00 p. m.

Q. Would you tell the Court and jury, please, sir, the names of the people who were at work in your office out there on that shift?

A. I don't know that I can.

Q. Well, name all you recall?

A. I keep the pay roll, but I don't memorize it.

Q. All right.

A. I keep it daily, and most of the men work the same day, but there is extra men that work each day.

Q. Well, do you remember whether Mr. D. E. Mullins worked that day or not?

A. Yes, Mullins worked.

Q. Do you remember whether J. W. Scott worked or not?

A. I believe he did.

Q. All right.

A. I am not too sure, but I believe he did.

Q. Was Mr. Ben Mitchell present in that office on that Sunday night?

A. He was.

Q. Now, Mr. Duncan, I wish you would tell us, please, sir, just tell the jury what was the first thing that happened that came to your personal attention, which pertained to a work stoppage, or anyhing unusual there that evening?

A. Well, I suppose I would have to give that in narrative form, and start out at 3:00 p. m. when I went on duty. Do you want me to do that?

Q. Well, what happened at 3:00 p. m.?

A. I went to work, went on duty.

Q. Did you perform your normal routine duties?

A. No, I did not. Mr. Pyron, Assistant to the Trainmaster, was there. It was a little unusual for him to be there on Sunday.

Q. Mister who?

A. Mr. Pyron, P-y-r-o-n.

Q. Mr. Pyron?

A. Charlie Pyron. He is Assistant to the Trainmaster. Mr. Mitchell was the Trainmaster.

Q. Yes, sir.

A. He was there, but he was only there for, oh, maybe 30 minutes.

Q. Yes, sir.

A. He came to my desk and talked with me about routine Company business, nothing unusual. He left and stated he was going home.

About 4:00 p. m., or between 3:30 and 4:00 the Frisco Railroad over at the East Thomas Yards phoned me and said "We have received a cut of cars over here with two cars of stock in it, but we do not have any waybills for it."

Well, I searched around and found the bills, and went on over to the parking lot to try to head off Mr. Pyron to get him to take them over to them. They said they were going to set them back, and we would have to feed and water them, and they wouldn't make the train. Of course, you have got the 36 hour feed law involved, and things of that kind, and I didn't want—

Q. Yes, sir.

A. But as I got over to the parking lot I saw Mr. Pyron's car pulling out on the highway, and I missed him. It was about six blocks over to that parking lot.

And I came back and went in the Yardmaster's Office and got hold of W. M. Porter, Assistant General Yardmaster that was on duty, and I stated to him my family brought me out that afternoon in the car, and I didn't have my car, "How about getting your car out and taking me to the Frisco Railroad to carry those bills?" He said "O. K."

So we went back to the parking lot and went to the Frisco Railroad. I think that is the first time I had ever been to the Frisco Railroad, that is away on the back side like that. We got away back over here around Arkadelphia Road, we came in on the back side and got lost a time or two.

And just before dark we got back in there to where the switching crew was, and I told them not to throw the livestock back into the setback track of the L&N, that we had the bills. They said "Go over to this remote talking system and tell the man in that tower, and let him relay it to the Chief Clerk in the office that you have got the bills, and put them in the tube and shoot them up to the office."

And we put them in the tube and shot them up to the office. I guess we stood around and talked about 30 minutes with the switching crew, and then it was about dark, so we headed back towards Boyles. We got back there I would say between 6:30 and 7:00. Of course, I wasn't keeping time against myself.

When I got back to the office I found Mr. Mitchell at my desk. I have a big desk, double desk, and when two sits at the desk, one sits facing the other across the desk. He was sitting across the desk. And I came to my office, to my desk and sat down and he handed me a note. He wrote it while I was sitting there, and he handed me a note.

Q. All right, what did it say?

A. This note says "Come outside, I want to talk to you." So he got up and went outside, and I got up and followed him. I got outside and he asked me, says "Do you know anything about a strike coming off tonight?" I says "No." He says "You don't know anything about it?" I says "No, you are telling me." I says "I don't know anything about a strike'. I says "What are you doing over here anyhow, Sunday evening?"

He said "Well, I heard there was going to be a strike." Well, I said "I don't know anything about a strike. Come on, let's go back.' He said "Well, the reason I wanted you out here, I didn't want any of the boys to hear me talking to you about an unusual matter like that," I said "Well, I don't know a thing in the world about it."

Q. Mr. Duncan, to interrupt you just a minute, Mr. Mitchell had already completed his day's work that day before he came back, had he not?

A. Well, Mitchell really doesn't have any so-called "Day's work." He's on duty 24 hours a day, every day, its always been my information.

Q. Was it normal for him to be around there Sunday evening?

A. No it is not normal for him to be around there Sunday evening. He calls me a time or two on Sunday afternoon, but its not normal for him to be there. And if the Railroad is running in normal course, no wrecks or anything, he never comes out.

Q. You didn't have any wrecks or anything like that that afternoon, did you?

A. No, no wreck.

Q. What was the next thing that happened after you got back in the office?

A. Well, I don't know; my usual course of business, made out the pay roll; I presume answered the phone every time it rang. I do remember two or three times it rang, and somebody asked for Mr. Mitchell in sort of a manner as though presuming he was there. He had a lunch with him, sitting on the desk. I know I kidded him about "Let's eat that lunch."

Q. All right. Mr. Duncan, if I might interrupt you just a minute. Were you notified by any person or persons that a work stoppage had occurred that evening?

A. No, I was not notified.

Q. How did you come to find out about it?

A. Well, about—time rocked along until about 9:00 o'clock. About 9:00 o'clock, well, two men walked in the doorway across the office from me. That office is much larger than this room, I would say, and my office, my desk is in one corner of the office. I have a board on the wall behind my desk, that I operate, with a paddle, and the name of each employee is on a paddle, and when anyone calls in and asks to get off the board, I put him on the off board, and when he reports back, I put him back on his job.

I have sort of a secluded place over there, and I make out the pay roll, and answer all the phones. And there was two doors to go out by. The furthest door from me, which is away over in the corner, going towards what is known as the Yard Dispatcher's Office, two men came in and said "Let's go, boys, there's a strike on."

Q. Do you know who those two men were?

A. I do not.

Q. Had you ever seen them before?

A. I can't recall that I ever did. They were in work clothes.

Q. They were in work clothes?
A. They were.
Q. Are you positive of that?
A. I'm pretty sure they were.
Q. How long have you been with the Railroad?
A. 36 years.
Q. Now, Mr. Duncan, did either of these men have anything in their hands?
A. Not that I saw.
Q. Did you have a clear view of them when they came in?
A. Yes, I believe I did.
Q. And when they were there?
A. I would have to look over several desks between me and them, but, yes, I suppose from desk height, probably belt high on up, I had a clear view of them.
Q. How did you say they were dressed, sir?
A. The best I remember—I didn't pay any particular attention. The best I remember they had on work clothes.
Q. Had on work clothes?
A. Yes, sir.
Q. All right.
A. I just presumed they were working men there.
Q. Do you know a fireman by the name of Myrick?
A. I do not.
Q. Do you know a fireman by the name of Davis?
A. I do not.
Q. Do you know a fireman by the name of Baum, H. M. Baum?
A. I do not.
Q. Well, look around the Courtroom and see if you see anybody here that was in there that night?
A. No, I don't believe I do.

Q. All right. Where was Mr. Mitchell seated when these men came in?

A. By me, across the desk from me.

Q. Across the desk from you?

A. That's right.

Q. How many men did you say there were?

A. Two.

Q. Two men?

A. Yes, sir.

Q. How long did they stay in there?

A. Oh, less than five minutes, I am sure.

Q. Did they say anything other than what you have already testified to?

A. That's all I heard them say "Let's go, boys, there's a strike on."

Q. You saw nothing in their hands, is that correct?

A. I saw nothing in their hands.

Q. The two men then left the office immediately, is that correct?

A. Yes, sir.

Mr. Simpson:

We object as leading. The witness didn't say they left immediately, he said they stayed in there some minutes.

The Court:

Don't lead the witness.

Mr. Taylor:

All right, sir.

Q. When did they leave, after they made this statement?

A. They went out the same door which they came in.

Q. How long did they stay there?

A. Oh, a minute or two, less than five minutes.

Mr. Taylor:

I believe that's all, Mr. Duncan.

Cross Examination.

By Mr. Gibson:

Q. When you went to work at 3:00 o'clock everything appeared to be normal in the Yard, didn't it?

A. Yes, sir, it did.

Q. Until that little conversation with Mr. Mitchell outside of the office, outside of the Yard Office later in the evening?

A. Yes, sir.

Q. Everything continued to appear normal?

A. Yes, sir.

Q. And after that conversation up until approximately 9:00 o'clock everything remained normal?

A. You see, one unusual thing happened, and that was that I was really away from the office the biggest part of the time, from about 4:00, say until—on account of leaving these bills, I just left the office and carried the bills and left one of the boys, I forget which one, I told him to answer the phone, and I would be at the Frisco Railroad office or somewhere in that vicinity.

Q. So far as you could tell—

A. That's the only unusual thing about the day's business that I noticed that day.

Q. I understand.

A. Yes, sir.

Q. Now, as a veteran railroad employee of thirty odd years, according to your observation, from 3:00 o'clock when you went to work until 9:00 o'clock, when these two men walked in the Yard Office and said "There's a strike on, let's go", or "Let's get out, that Yard was functioning entirely normally, wasn't it?

A. So far as—the office was.

Q. All right.

A. Of course, I am not on the Yard.

Q. Yes, sir.

A. I presume that the Yard was.

Q. That's what I mean.

A. The office was, of course, functioning normally, yes, sir.

Q. You saw nothing abnormal about the way the Yard was functioning, did you?

A. I saw nothing abnormal at all.

Q. Then about 9:00 o'clock you said two men came into the Yard Office. And will you repeat what you heard them say as well as you can recollect?

A. Well, in substance, and this may be the verbatim words "Let's go, boys, there's a strike on." I would rather in substance say that is the words they used.

Q. You were sitting there?

A. Yes, sir.

Q. You described that office as larger than this room?

A. Yes, sir, it is some larger.

Q. You were sitting there about as far from the door they came in as you could have sat?

A. Yes, just about as far, and still be in the office.

Q. Yes, sir. In answer to one of Mr. Taylor's questions you stated that you could see these two men from approximately the waist up?

A. Yes, sir. There was one, and maybe two desks, between me.

Q. If at the time you looked at them these two men had had sticks 2 or 3 feet long in their hands down by their side, like this (illustrating), you wouldn't have seen those sticks, would you?

A. I might not have seen them.

Q. All right, sir.

A. No, sir.

Q. Now, when the announcement was made in your hearing that there was a strike on, what did you do then?

A. Stayed right there at my post of duty.

Q. For how long?

A. Until the lights went out. When the lights went out, well I shut off my operation then. That wound me up.

Q. Did Mr. Mitchell turn the lights out?

A. I wouldn't think so. He was sitting there by me.

Q. Did you turn them out?

A. No, sir.

Q. Did anybody there on duty in the Yard Office, so far as you know, any person who belonged there turn them out?

A. I wouldn't think so.

Q. So if they were turned out they were turned out by somebody who had no duty to perform in the Yard Office, is that correct?

A. No one has the duty of—well, let's see, that light box, I suppose you would call it a master electric system, is about as far as from here to that last gentleman on the jury from me, to my right, over against the wall.

Q. Yes, sir.

A. And there is a desk between me, and there is two or three upright racks where you hang clothes. I may and may not have a clear view, it just depends on whether those were shifted, in taking clothes off and on, but about 20 feet from me.

Q. Nobody, so far as you know, who had any business, turning the lights off---

A. No, sir.

Q. —inside of that Yard Office turned them off, did they?

A. No, sir, no, sir, no one.

Q. If they were turned off they were turned off by some one who had no—

Mr. Taylor:

If the Court please—excuse me.

Q. —they were turned off by some one who had no regular duties to perform in the Yard Office, did they?

Mr. Taylor:

We object as argumentative. He stated he didn't know who it was.

The Court:

I sustain the objection.

Mr. Taylor:
He said he didn't know who turned them out.

The Court:
I sustain the objection.

Q. You said that what caused you to leave the place was the turning out of the lights?

A. Well, let's see now. I heard numerous voices outside, and I was reasonably sure that there was a crowd out there. And I remember remarking to Mr. Mitchell when the lights went out—he had a flashlight—he and I were still together. I believe he had called the Superintendent, Mr. Kirchner, I believe he had, and talked to him, and given him a report on details up until then. And he had a flashlight. He said something about getting his cigarettes upstairs. Somebody hollered "Let's go."

Q. Wait a minute. Was that hollered "Let's go" after the two men had come in the Yard Office?

A. Oh, yes, some little time.

Q. When did that occur?

A. I sat back down at my desk, of course, and went on to work, answering the phones, and everything after they left.

Q. Did that call, the second call "Let's go", did that come from outside the Yard Office?

A. Yes, that came from outside.

Q. Was there a pretty good size group of men outside?

A. Yes, I would say there was. Of course, I didn't know how many was out there then.

Q. You could hear them, couldn't you?

A. I could hear them, and more than one voice.

But later, after the lights went out, I did go outside with Mr. Mitchell, and I—

Q. There was a crowd out there?

A. There was a number of men, but all of the lights in the whole Yard was out, and about all I could see was by Mr. Mitchell's flashlight. All of the arc lights in the whole System was out, and so it was dark inside—and I presumed—I was thinking maybe it was probably lighter on the outside than in, but it was just as dark when we got outside.

Q. Well, somebody turned off the lights so you couldn't work?

Mr. Taylor:
We object to that.

A. That's right.

The Court:
I sustain the objection.

Mr. Taylor:
I move to exclude it.

The Court:
That is excluded, gentlemen.

Q. When Mr. Taylor asked you to look around the room and tell the jury whether you could identify anyone who came into the office, any of these men, as being among those who came into the Yard Office and made that announcement "The strike is on, let's go", you answered that you couldn't identify any of them?

A. Yes, sir.

Q. Now, Mr. Duncan, you didn't mean to tell this jury under oath as a matter of fact that none if these men came in, did you?

Mr. Taylor:
We object to that. That is invasive of the province of the jury. He testified he couldn't identify them.

The Court:
I overrule the objection.

A. None of these faces that I see here were the two that came in. I know some of theese faces, and I know some of these men by name.

Q. And you swear to this jury that none of these men were included in the two that came in the door?

A. They were not, because I would have known them. They were not.

Q. Well now, you did not know Baum, H. M. Baum, before this, did you?

A. No. I still don't know him. He may be one of the gentlemen over there with the familiar face, but to put that face to the name Baum—is it Vaughn or Baum?

Q. Baum, B-a-u-m.

A. But to put that face to the name Baum, I just couldn't do it.

Q. And you don't know T. E. Davis, didn't know him before?

A. No, sir.

Q. October 23?

A. I just don't know either one of those men, right now I don't know them.

Q. You didn't know Claude Myrick before that then, did you?

A. No, sir, I didn't.
Q. You didn't know C. L. McCutcheon?
A. No.
Q. And you didn't know Marvin Hall?
A. I did not.
Q. Nor Bruce Barnett?
A. I did not.
Q. Do you know them now?
A. I don't know a one of them now.
Q. All right, sir.
A. I know Mr. Parker, I have known him all his life.
Q. You left that Yard Office on Sunday night, October 23, about 9:00 o'clock because you were ordered to leave and you were afraid to stay, for your own safety?

Mr. Taylor:
Just a minute.

Q. There was a mob outside, didn't you?

Mr. Taylor:
We object to that.

The Court:
I sustain the objection as to why he left.

Q. Will you tell the jury whether or not at some time since that occurrence you talked to Mr. James A. Robey, about the strike and work stoppage?
A. That's true, I went to Mr. Gibson's office and made a statement to Mr. Robey.
Q. Yes, sir, and you stayed there quite some time?

A. Yes, sir.
Q. Discussed it at some length?
A. I did.
Q. I will ask you, Mr. Duncan, whether or not during that conversation that you had with Mr. Robey, as you related, you said to him in substance "I was ordered to leave, and I was afraid to stay for my own safety, as there was a mob outside"?
A. I probably said that.

Mr. Gibson:
All right, sir. You can come down.

Mr. Taylor:
That's all.

(Witness excused.)

The Court:
Call your next witness.

Mr. Taylor:
Call Mr. John C. Smith.

JOHN C. SMITH, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Taylor:
Q. Will you please state your name?
A. John C. Smith.
Q. You are employed by the L&N Railroad, are you not?

A. Yes, sir.

Q. You were employed in October, 1955, by the L&N?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. What was the nature of your employment in October, 1955?

A. Crew Caller at Boyles.

Q. Crew Caller at Boyles?

A. Yes, sir.

Q. Were you on duty Sunday, October 23, 1955?

A. No, sir.

Q. You were off duty?

A. Yes, sir.

Q. When were you next due to go to work?

A. I was supposed to go to work on Tuesday.

Q. On a Tuesday?

A. Yes, sir, but I went down Monday morning.

Q. Did you go down there Monday morning?

A. Yes, sir.

Q. At the time when you arrived at Boyles on Monday, did you observe that there was a work stoppage in progress?

A. Well, sir, when I was up there there was 12 or 15 men out there.

Q. At what entrance?

A. At 39th Avenue and Vanderbilt Road, the side gate.

Q. 39th Avenue at Vanderbilt Road?

A. Yes, sir.

Q. Did you see anybody that you recognized down there that Monday morning?

A. Yes, sir.

Q. Name some of the people that you remember you saw.

A. Mr. Wilkes, Louis Wilkes, Mr. Baum, Mr. Jack Wall, and I don't recall, 12 or 15 or 20 men standing around there talking.

Q. What occupation is Mr. Wilkes in?

A. He is a switchman at Boyles.

Q. What occupation is Mr. Baum in?

A. He is a fireman.

Q. Did you engage in any conversation with Mr. Baum there on that Monday morning?

A. Yes, sir.

Q. Tell the jury what you said to him and he said to you.

A. Well, sir, when I went up Mr. Baum was standing by the gate, and there was several people standing around, and I asked Mr. Baum what was going on, and he said they were having labor trouble. I asked him was there anybody in there working, and he said "No, sir." He said "The gates have been open, if anybody wanted to go in, but there hasn't been anybody to go in so far."

Q. Did you hear Baum direct anybody not to go in?

A. No, sir, he did not. I stood around there until, oh, 10:30 or 11:00 o'clock, and then went on down towards the cafe.

Q. Just before we leave that, did you see anybody threatened while you were there?

A. No, sir, I did not.

Q. Did you see anybody try to go in the gate?

A. No, sir.

Q. And prevented from going in?

A. If they wanted to go in the gate was open, wasn't anybody standing around there to keep them from it.

Q. Did you go back down there on Tuesday morning?

A. Yes, sir. In fact, I hung around there, off and on there and down at the roundhouse until we went back in.

Q. Did you see Mr. Baum down there on Tuesday morning?

A. I don't recall. I think he was around there. I don't recall.

Q. Do you recall any specific day during the work stoppage other than Monday that you saw Mr. Baum around there?

A. No, sir.

Q. In all the times that you were around there did you see anybody prevented from going in the gate?

A. No, sir. I would go on down by the roundhouse and get me a cup of coffee. I never heard anybody tell them they couldn't go in or anything.

Q. Did you see any pickets parading out there?

A. No, sir, there wasn't any pickets.

Q. There wasn't any pickets down there?

A. No, sir.

Mr. Taylor:

I believe that's all.

Cross Examination.

By Mr. Simpson:

Q. Do you know Mr. Chapman?

A. Mr. Champan, the fireman?

Q. Yes.

A. Yes, sir.

Q. You saw him here on the stand yesterday, didn't you?

A No, sir, I did not.

Q. You were not here yesterday?

A. No, sir, not all day. I was up off and on, but I didn't see Mr. Chapman, no, sir.

Q. Did you see Mr. Chapman on picket duty out there?

A. No, sir.

Q. Did you see Mr. McCutcheon on picket duty out there?

A. I didn't see anyone on picket duty.

Q. You just say there weren't any pickets?

A. No, sir.

Q. You saw people standing around those entrances, didn't you?

A. Yes, sir.

Q. People standing around there all during the strike, weren't they?

A. Yes, sir.

Q. Doing a lot of whittling too, weren't they?

A. Yes, sir, I whittled some myself.

Q. You did some whittling?

A. Yes, sir.

Q. How big a knife did you have to whittle with?

A. Just a regular pocket knife.

Q. Have you got it with you?

A. No, sir, I don't even have one now.

Q. You haven't got it with you?

A. No, sir.

Q. Most everybody around there was whittling on sticks and clubs, weren't they?

A. Yes, sir.

Q. Yes.

A. Well, not most everybody. Some people whittled off and on all the time.

Q. You say that those fellows whittling around there, you didn't see anybody try to go in, with those fellows all whittling around there?

A. No, sir, I sure didn't.

Q. You have the reputation, haven't you, out there, Mr. Smith, of being one of the most dangerous men out there in that Yard?

A. No, sir. I think I am about one of the most likeable persons around there.

Q. I am sure you are.

A. I've got a good reputation.

Q. But you are known as a dangerous man in that Yard, aren't you?

A. No, sir.

Mr. Simpson:

All right, you may come down.

Re-Direct Examination.

By Mr. Taylor:

Q. You didn't see anybody with any clubs around there?

A. No, sir.

Mr. Taylor:

That's all. You can come down.

Mr. Simpson:

That's all.

Mr. Taylor:

May he be excused?

The Court:

The witness may be excused.

(Witness excused.)

LOUIS WILKES, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Taylor:

Q. Will you state your name, please, sir?

A. Louis Wilkes.

Q. And you are employed by the L&N Railroad, are you not?

A. Yes, sir.

Q. What is the nature of your occupation, what is your job?

A. Switch Engine Foreman.

Q. Were you so employed in October, 1955?

A. Yes, sir.

Q. Now, Mr. Wilkes, do you know the work stoppage which occurred in October?

A. Yes, sir.

Q. Did you work Sunday, October 23?

A. Yes, sir.

Q. What time did you get off?

A. I beg your pardon, I didn't work that day.

Q. You didn't work that Sunday?

A. No, sir.

Q. What time were you due to go to work Monday?

A. 7:00 o'clock.

Q. Did you go to the Boyles Yard Monday morning?

A. I did.

Q. That is the 24th of October?

A. Yes, sir.

Q. At what entrance to the Yard did you come to, if you came there?

A. Pinson Pike.

Q. Pinson Pike?

A. Yes.

Q. Does that have a name?

A. Well, I think it is 39th Avenue, I believe it is, I don't know exactly what the name of the street is, but I believe that's what it is.

Q. Did you see any people around that gate when you arrived there?

A. Yes, sir, there was several there.

Q. Was there quite a crowd there?

A. Yes, sir.

Q. Did you see anybody that you recognized by name or that you knew?

A. Yes, sir, there were several I knew, switchman, shop men.

Q. Did you see people from all crafts on the Railroad there?

A. Yes, sir, all crafts.

Q. Clerks, switchmen, firemen?

A. Yes, sir.

Q. Engineers?

A. Yes, sir.

Q. Tell the Court and jury the names of some of the people you saw, if you remember them?

A. Well, I couldn't hardly begin, there was so many of them there.

Q. Well, do you know Mr. H. M. Baum?

A. Yes, sir.

Q. What is his occupation?

A. He is a fireman.

Q. Did you see him there that morning?

A. I did.

Q. All right, did you have any conversation with Mr. Baum there?

A. Yes, sir, when I got there he said they were having labor trouble.

Mr. Simpson:

We object to the conversation, self-serving declarations. They were not made to anybody acting for the Company. It is just a conversation between Mr. Baum and friends.

The Court:

I exclude it. It would be self-serving. I sustain the objection.

Q. Did you hear anybody inquire about what the trouble was inside?

A. Yes, sir, I asked him what the trouble was, and they just said it was labor trouble.

Q. Who said that?

A. Mr. Baum told me that they had labor trouble.

Q. Did you hear anybody ask permission to go in?

A. Yes, sir, I asked permission to go in, when the Local Chairman said we could go in and make a time claim, to see if the Company would pay us for being there that day, on account of the firemen being out. And I asked Mr. Baum if I could go in, and he said "You can go right on in and make out your time ticket, no objection."

Q. Was the gate open?

A. Yes, sir.

Q. Did you see anybody prevented from going in there?

A. No, sir.

Q. Did you see anybody standing around with clubs in their hands?

A. I did not.

Q. Did you see anybody there with a picket sign?

A. No, sir.

Q. Did you see anybody marching up and down in front of the gate?

A. No, sir, just gathered around the gate, they was all talking.

Q. Was there anybody threatened in your presence or hearing?

A. Not that I heard.

Q. Was there anybody molested in any way in your presence or hearing?

A. No, sir.

Q. Did you go back down there on Tuesday?

A. I did.

Q. Did you see Mr. Baum there on that day?

A. To the best of my recollection I did.

Q. Did anyone in your presence or hearing say anything about going in the Yard at that time?

A. No, sir, I don't believe they did, just the same as it was.

Q. Did anybody make any effort to go in?

A. No, sir.

Q. Was anybody threatened or struck or intimidated in your presence or hearing?

A. No, sir, wasn't.

Q. Did you see any violence of any kind on Monday or Tuesday?

A. None whatsoever.

Q. Did you go down there on Wednesday?

A. Yes, sir.

Q. Was there about the same situation?

A. The same situation Wednesday.

Q. Mr. Wilkes, I believe on these three days you have testified about, Monday, Tuesday, and Wednesday, well—I will ask you what were the normal hours of your shift on those days?

A. From 7:00 to 3:00.

Q. Did you stay in the vicinity of the Boyles Yard there from 7:00 to 3:00 on each of those days?

A. No, sir.

Q. How long did you stay down there?

A. Oh, I would say a couple of hours each day, then went back home.

Q. On either of those three days did you see any work going on in the Yard?

A. No, sir.

Q. You came down there for the purpose of seeing if there was any work, so you could go to work, is that right?

Mr. Simpson:
We object to that.

The Court:
I sustain the objection.

A. No, sir.

Mr. Taylor:
We except. That's all.

Cross Examination.

By Mr. Gibson:

Q. You told the jury in response to a question by Mr. Taylor that you knew Mr. Baum?

A. Yes, sir.

Q. And that on Monday morning after the strike or work stoppage began you were at the 39th Avenue gate?

A. Yes, sir.

Q. Is that what you call the main gate?

A. Yes, sir.

Q. You encountered Mr. Baum there?

A. Yes, sir.

Q. And there was a large crowd of people?

A. Yes, sir.

Q. Tell the jury what some of these people were doing. What were they doing, just standing around there?

A. They were just standing around talking.

Q. Did you see any whittlers?

A. Any which?

Q. Any whittlers.

A. Oh, yes, always whittling.

Q. I believe you told the jury on direct examination that you saw your friend Baum there?

A. Yes, sir.

Q. And that you went up to him and you asked him if it would be all right, if you could go in and make out a time card or something?

A. That's right.

Q. And he gave you permission to do it?

A. Yes, sir.

Q. Can you tell the jury how you came to select Mr. Baum to ask that question of?

A. Well, he just happened to be standing there.

Q. In the ordinary course of events do you ask somebody's permission to go on your employer's property through a gate?

A. No, sir.

Q. How did you come to pick out H. M. Baum to ask whether you could go on in?

A. Because the firemen was having labor trouble, and he is the first one I saw.

Q. The switchmen were not having any labor trouble, were they?

A. No, sir.

Mr. Gibson:

Thank you. You may come down.

Mr. Taylor:

That's all. Can this witness be excused?

The Court:

The witness will be excused. We wont have time for another witness now.

Gentlemen we are going to recess until tomorrow morning at 9:00 o'clock. Be back in your places at 9:00 o'clock. In the meantime, don't talk to anybody about the case.

(Whereupon, at 4:35 p. m. an adjournment was taken until 9:00 a. m., Thursday, September 27, 1956.)

Thursday, September 27, 1956,
9:00 A. M.

The Court:

Proceed

Mr. Pettus:
Mr. Grissom.

W. L. GRISSOM, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:

Q. Are you Mr. W. L. Grissom?
A. That's right.
Q. You are one of the Defendants in this case?
A. Yes, sir.
Q. Where do you live?
A. 5332 5th Terrace South.
Q. Here in Birmingham?
A. Yes, sir.
Q. Are you the W. L. Grissom that is named in this notice of the abolishment of the hostler helpers jobs that is marked Defendants' Exhibit 1?
A. Yes, sir.
Q. In this notice it states that your seniority date is September 30, 1925?
A. That's right.
Q. Did you hold that seniority as a hostler helper?
A. Yes, sir.
Q. When your job was abolished—when did you say it was abolished?
A. September 23—I mean October 23.
Q. October 23?
A. 1955.
Q. October 23, 1955?
A. Yes, sir.

Q. And you were working on the first shift?

A. Yes, sir.

Q. When your job was abolished did you have seniority in any other job with the L&N Railroad Company?

A. I did not.

Q. You did not have any?

A. No, sir.

Q. In other words, when your job as outside hostler helper was abolished you couldn't roll anybody off of their job?

A. No, I couldn't.

Mr. Pettus:

Now, Your Honor, we will offer this Defendants' Exhibit 1 that has been marked for identification. We offer it in evidence now.

The Court:

All right.

Q. Mr. Grissom, what labor organization, if any, are you a member of?

A. The Brotherhood of Locomotive Firemen and Enginemen.

Q. Is that the same organization that Mr. J. B. Otts, Jr. is Local Chairman of?

A. That's right.

Q. And as hostler helper were you covered in the agreement between the L&N Railroad Company and the Locomotive Firemen and Hostlers?

A. Yes, sir.

Q. Now, did you attend a meeting of your labor organization, that is the Firemen's Organization, on the Friday before this October 23?

A. I did.

Q. Where was that meeting held?

A. At Inglenook I believe it was the Masonic Hall there on Vanderbilt Road. I don't know the number.

Q. Do you recall how many were at that meeting?

A. Yes, about it.

Q. About how many were there?

A. I would say seven or eight or nine.

Q. That were at the meeting?

A. Yes, sir.

Q. At that time was this notice, or was there any discussion about the abolition of the hostler helpers jobs?

A. Well, no up there. There was outside there, before we went in and after we came out.

Q. Before you went in and after you came out?

A. Yes, sir.

Q. Was there any letter read or anything there at that meeting?

A. There was a letter from Mr. Jake Paschal.

Q. Who is he?

A. He is our General Chairman.

Q. A letter was read?

A. Yes, sir.

Q. At that meeting?

A. Yes, sir.

Q. With regard to the hostler helpers jobs?

A. Yes, sir.

Q. After you got outside was there any further discussion with regard to the hostler helpers jobs?

A. Yes, we decided we would have a little meeting, you know, individual meeting, and gather up the circumstances on the way to handle this, you see, with Mr. Paschal.

Q. How many were there? Where was this other little gathering held?

A. It was down right across from the hall there. There is a post there. I don't know that street.

Q. Were you out in the street?

A. No, we were standing kind of on the curb there.

Q. Standing out there?

A. Yes, sir.

Q. In the street?

A. Yes, sir.

Q. How many were in that group?

A. Well, there was probably six or seven or eight.

Q. And do you recall who was there?

A. Well, Shorty Parker and McCutcheon, Red Fleming, and myself, and I believe Mr. Thomas and Mr. Otts, he was around there.

Q. Now, Red Fleming is the man that first testified in this case, isn't he?

A. Yes, sir.

Q. And he was one of the men that occasionally did some work as a hostler helper?

A. Yes, sir.

Q. Mr. McCutcheon was another one of the hostler helpers, was he?

A. Yes, sir.

Q. Was it decided there that the meeting was to be at Shorty Pa.ker's house?

A. Yes, sir.

Q. When was the meeting to be held?

A. Sir?

Q. Was it decided then?

A. You mean when it was decided on?

Q. Yes.

A. 4:30.

Q. At 4:30 on Sunday?

A. Sunday.

Q. Did you work the next day, on Saturday, do you recall, after that?

A. Yes, sir.

Q. You worked on Saturday?

A. Yes, sir.

Q. Did you work on Sunday?

A. I did.

Q. The day of the meeting?

A. Yes, sir.

Q. About what time did you get off?

A. I got off at 3:00 o'clock, 3:00 p. m.

Q. 3:00 o'clock?

A. I had to change clothes, take a bath, pack up my work clothes.

Q. Did you change clothes at the Yard or did you go home?

A. We changed clothes in the washroom, next to the roundhouse office.

Q. Next to the roundhouse office?

A. Dispatcher's Office.

Q. Then did you go on over to the Parker meeting place, Parker's house?

A. Well, I went out near the L&N Coffee Shop there and stood around a little while, and then we went to the meeting.

Q. Where is the L&N Coffee Shop?

A. Right, you might say directly in front of the main entrance to the roundhouse.

Q. Is the L&N Coffee Shop in the same vicinity as Rex's Barbecue?

A. Well, it was I guess a half a block.

Q. About a half a block away?

A. Yes, sir.

Q. After being around there did you go on over to Parker's house?

A. Yes, sir.
Q. Did you go with anyone?
A. No, sir, I went by myself, in my own car.
Q. You had your own car?
A. Yes, sir.
Q. And you went by yourself?
A. Yes, sir.
Q. Now, when you arrived at Parker's house about what time did you get there?
A. About 4:15.
Q. About 4:15?
A. Yes, sir.
Q. Were you among the first to arrive?
A. There was several there.
Q. All right.
A. There was several standing around there when I got there.
Q. Several standing around?
A. Yes, sir.
Q. Where was the meeting at Parker's house actually held?
A. It was in a garage basement.
Q. In a garage basement?
A. Yes, sir.
Q. About what time did everybody get into the basement if you know?
A. About 4:30.
Q. About 4:30?
A. Yes, sir.
Q. Do you recall the men that were there in the basement?
A. Yes.
Q. Can you name them?
A. Yes, some of them.
Q. Name the ones you recall.

A. Well, Mr. Thomas, Mr. Otts, Mr. Parker, Mr. Brown. Mr. Southerland, Barnett, Letchman, Mr. Weldon, Mr. McCutcheon, Mr. Anderson, Mr. Hall, Mr. Sutterlin. I believe that's all, I don't know whether that's all of them or not.

Q. Did you say anything at the meeting that you recall?

A. Well, I did say I believe one thing.

Q. And was the subject of the meeting a discussion of the abolition of these hostler helpers jobs?

A. Why, yes, and the handling of it through the General Chairman.

Q. Now, will you just tell as well as you can recall what was said at that meeting, and if you recall who said it, state his name? Just give your recollection of what occurred there.

A. Well, we kind of were in groups around there, and everybody was talking. They were going to handle it up through the proper procedure. I believe Mr. Otts said that's the way they would handle it, and gather up all the circumstances, see, that was the purpose of the meeting.

Q. About how long did the meeting last?

A. Oh, 30 minutes I guess.

Q. About 30 minutes?

A. Yes, sir.

Q. Did you leave when the rest of them left?

A. Yes, probably before some of them left.

Q. You left probably before some of them left?

A. Yes, sir.

Q. Where did you go after the meeting?

A. Red Fleming, he rode with me from—we came down Jefferson Boulevard and he got out at Jefferson Boulevard and Pinson or Vanderbilt Road I believe they call it. He said his wife was over there somewhere, and he got out there.

Q. Then where did you go?
A. Went straight home.
Q. You went on home?
A. Yes, sir.
Q. Now, later that day did you go anywhere else?
A. Yes.
Q. Where did you go?
A. I went down to the station.
Q. Went where?
A. Yes, sir, to the station.
Q. You went down to the station?
A. Yes, sir.
Q. You mean downtown?
A. Yes, sir.
Q. In Birmingham?
A. Yes, sir.
Q. To the L&N station?
A. Yes, sir.
Q. What did you do there?
A. Well, there was a switchman called me. I was gone to North Birmingham to carry a maid at that time, and he called my wife, and he wanted to know of her if I knew anything about any trouble on the L&N, and she told me about it when I got back.

Mr. Simpson:
We object to conversations between third parties. This Defendant himself was not present.

The Court:
I sustain the objection, gentlemer ...at is excluded from your consideration.

Q. Was there a telephone call received by your wife?

Mr. Simpson:
We object to that, unless he was there and knows for himself, may it please the Court.

The Court:
I sustain the objection.

Mr. Simpson:
That's leading.

The Court:
Were you present?

The Witness:
Sir?

The Court:
Were you present when your wife received the call?

The Witness:
No, sir.

The Court:
I sustain the objection.

Q. After you got back to the house from taking the maid somewhere did you make a trip?
A. I made a trip.
Q. Where did you make a trip to?
A. To the L&N station.
Q. What did you do when you got to the L&N station?
A. I parked in front of the Superintendent's Office and walked up in the little parkway and looked under the shed. I didn't see a thing or anybody.

The Court:
What time was this?

The Witness:
That was about 9:00 o'clock.

The Court:
9:00 o'clock?

The Witness:
9:05.

Q. About what time?
A. About 9:00 o'clock.
Q. All right.
A. And then I left there about 9:05.
Q. You got there about what time?
A. 9:00.
Q. About 9:00?
A. Yes, sir.
Q. This is Sunday night?
A. Yes, sir.
Q. What time did you leave there?
A. 9:05.
Q. You just stayed about five minutes?
A. Yes, sir.
Q. Then were did you go?
A. I came out to Rex's.
Q. You came out to Rex's?
A. Yes, sir.
Q. About what time did you arrive at Rex's?
A. About 9:30.
Q. Did you see anybody down at the L&N station?
A. There wasn't anybody there, I didn't see a soul.
Q. You didn't see a soul?

A. No, sir.

Q. When you arrived at Rex's did you see anyone there?

A. Yes, there was, the place was full of men, and all over the outside there.

Q. Were they railroad men, you mean?

A. Yes, sir.

Q. Could you tell?

A. Yes, all railroad men.

Q. Were all crafts there that you saw?

A. All crafts, yes, sir.

Q. How long did you stay at Rex's?

A. Well, I stayed out there until 6:30 next morning.

Q. You stayed at Rex's until 6:30 next morning?

A. Around that.

Q. What did you do on Monday during the work stoppage, Mr. Grissom?

A. Well, I went home Monday morning and went to bed, slept until a little after 12:00.

Q. Then were did you go, if anywhere?

A. I came back down to Rex's.

Q. Came back down to Rex's?

A. Yes, sir.

Q. How long did you stay there?

A. Oh, I stayed around there until probably 5:00 or 6:00 o'clock. I think I went back home then.

Q That is Monday afternoon you spent at Rex's, then came home?

A. Yes, sir.

Q. Is that right?

A. That's right.

Q. Then did you go anywhere that night?

A. I came back out to Rex's.

Q. You went back out to Rex's?

A. Yes, sir.

Q. Now, on Tuesday, what did you do on Tuesday?
A. I came out there Tuesday morning.
Q. You came to Rex's?
A. Yes, sir.
Q. How long did you stay there?
A. I stayed around there practically all day, until 6:00 o'clock, when I left.
Q. You left Rex's about 6:00 on Tuesday?
A. Yes, sir.
Q. Did you go anywhere Tuesday night?
A. Yes, I went down to the L&N station at 6:00 o'clock. I had an appointment there to meet a fellow named "Slim."
Q. About what time did you arrive there?
A. About 6:00 o'clock.
Q. About 6:00 o'clock?
A. Yes, sir.
Q. All right.
A. He said be there at 6:00 or later.
Q. How long did you stay there?
A. I stayed there until almost 12:00.
Q. Until almost 12:00?
A. Yes, sir.
Q. On Wednesday where did you go?
A. Well, Wednesday morning I went back out to Rex's.
Q. How long did you stay out there Wednesday?
A. I stayed there until along about in the afternoon.
Q. Wednesday afternoon where were you, do you recall?
A. I went back over to the L&N station at 4:00 or 5:00 o'clock and stayed there two or three hours.
Q. Now, Mr. Grissom, since the work stoppage have you done any work for the L&N?

A. No, I haven't.

Q. You have never been called back for any work with the I.&N?

A. No, I haven't.

Q. And you have no seniority except in this hostler helpers' job?

A. That's all.

Q. What does a hostler helper do, the outside hostler helper, the job that you were performing, when this notice was given?

A. He assists the hostler in the movement of engines anywhere he might go.

Q. Anywhere he might go?

A. For instance we go to get an engine out of the roundhouse. I turn the table, line it up on the track, and we have a lock on the table. I put the lock in. Then I step over and give the signal to either head or back out, put him on the table. And then I turn it the way that it is supposed to go, line it up with the out bound track, put in the lock, and then go out and throw a derail off and give him a signal.

Then we move up. I watch the fuel and give signals, I check the fuel.

Q. Check what?

A. The fuel. Then when we go back to the table to move it over to another track, of course, all of those are locked, derailers have got to be put back. Then we go up another track, take the stand. Then we switch back to the table, and some derailers and locks are to be put in. Then we put him on the ready track.

And then we build the units, you see, from one to four, or cut them out, pull pins. We operate it, you see, cut them off.

And then we do transfer over to the Yard, and when I go to the Yard or main line I act as a fireman.

Q. When you go to the main line you act as a fireman, is that right?

A. Yes, sir.

Q. Now, in the Yard there is some of your work away from the engine and some on the engine?

A. Yes, sir.

Q. While you are in the Yard do you ride in the cab on occasion?

A. I ride in the cab after the herder takes over.

Q. After the herder takes over?

A. Yes, sir.

Q. You ride in the cab?

A. Yes, sir.

Q. Would you ride in the cab before that time?

A. No, there is some switches up there within the roundhouse limits there that I have to throw, and most of the time I just ride the footboard.

Q. You ride the footboard?

A. Yes, sir.

Q. Until you throw the switches?

A. Yes, sir.

Q. At one point there the herder begins throwing switches, when you are going into the main line?

A. Yes, sir, after we get to the Yard lead.

Q. Then it becomes the herder's duty to throw those switches?

A. Yes, sir.

Q. And you ride in the cab there then?

A. Yes, sir.

Q. When you are riding on the main line you perform the same duties as a fireman, is that right?

A. Same as a fireman.

Q. The movements that the hostler assisted by the hostler helper performs with the engine are in the Yard and on short runs, just transferring the engine around, is that right?

A. That's right.

Q. And switching the engine?

A. Yes, sir.

Q. What was your rate of pay at the time your job was abolished?

A. $14.96.

Q. $14.96 a day?

A. That's right.

Q. You were not paid anything after your last shift, Sunday, October 23, were you?

A. No, sir.

Q. Now, Mr. Grissom, in your movements that you have given there on the engine when you are helping the hostler, he moves on your signal, is that right?

A. That's right.

Q. And how many years service did you have with the Railroad?

A. 30 years and 23 days.

Q. 30 years and 23 days?

A. Yes, sir.

Q. When your shift was over there that morning did you have any—or that day, what time was it over?

A. 3:00.

Q. It was 3:00 o'clock, wasn't it?

A. 3:00.

Q. Did you have any of your property there on the L&N premises?

A. Yes, sir.

Q. What happened to that property then?

A. I packed it up in a little paper box and carried it out with me.

Q. You carried it out with you?

A. And put it in the trunk of my car.

Q. You didn't have any of your clothes or anything left there after that shift on the job?

A. No, sir.

Mr. Pettus:

That's all.

Cross Examination.

By Mr. Smith:

Q. Mr. Grissom, when several of you got together Friday night at the Lodge over there and agreed to meet at Shorty Parker's house on Sunday afternoon, it was stated that that meeting would be to discuss the hostler helpers jobs, is that right?

A. Yes, sir.

Q. And did you agree to spread the word among other people to come to that meeting?

A. Yes, we said "If you see any of the fellows, tell them to come up."

Q. If you saw any of the fellows, tell them about it?

A. We were interested only in main line firemen, naturally. They are the only ones that know about the hostlers.

Q. I see. But the firemen would be the people interested in the hostler helpers jobs, wouldn't they?

A. Yes.

Q. I believe you said they were covered by the Fireman's agreement?

A. Yes, sir.

Q. Did you tell anybody to come to that meeting?
A. Yes, I did.
Q. Who did you tell?
A. I believe Mr. A. E. Hicks is the only one.
Q. Mr. Hicks?
A. That I invited.
Q. Did he come?
A. He was not there.
Q. Among the men that were there that you named, I don't know that I got all of them, I will ask you to tell me if Mr. Kennedy was there?
A. Yes, sir.
Q. Was he there?
A. Mr. Kennedy was there.
Q. You remember him?
A. I remember him.
Q. Do you remember Mr. Vann being there?
A. Yes, I do.
Q. Sir?
A. He was there.
Q. Mr. Fleming was there, you said?
A. Yes.
Q. Mr. Logan was there?
A. Mr. Logan was there.
Q. Mr. Edwards?
A. There was a conductor there that they said was Edwards.
Q. Sir?
A. There was a conductor there that they said his name was Edwards. I didn't know him.
Q. You were in here Monday when—
A. Yes, sir.
Q. —Mr. Edwards testified?
A. Yes, sir.
Q. That man was there, was he?

A. That was the man.

Q. When you got into that meeting somebody raised the question of the hostler helpers jobs being abolished, is that right?

A. Well—yes.

Q. Who brought that up?

A. Well, I don't know whether it was—Mr. Otts I believe.

Q. Mr. Otts?

A. Yes.

Q. And did he make any statement as to whether anything was being done about it?

A. Yes.

Q. What did he say was being done?

A. He told about the letter, and he read it, that he had from Mr. Paschal.

Q. The letter that he had from Mr. Paschal?

A. Saying they had violated the agreement and he would handle that, yes, sir.

Q. Did he have a letter from Mr. Paschal, you say?

A. Oh, yes. They had that at the regular meeting.

Q. Oh, he had that at the meeting on Friday night?

A. Well, he had it, spoke of the letter at that meeting.

Q. On that Friday night?

A. Yes, sir.

Q. I understood you to say earlier that there had been no mention made of the hostler helpers jobs at the Friday night meeting.

A. You mean up where?

Q. I understood a minute ago when Mr. Pettus was asking you some questions that you said the hostler helpers jobs were not mentioned at the Union meeting on Friday night.

A. Oh, they wasn't; the letter was read up there.

Q. The letter was read up there?

A. Yes.

Q. The letter related to the hostler helpers jobs?

A. You are right.

Q. You mean Mr. Otts got up and read a letter without making any comment at all about it?

A. No, Mr. Lloyd read the letter.

Q. Oh, Mr. Lloyd read the letter?

A. Yes, sir.

Q. Mr. Otts had the same letter at the Shorty Parker meeting?

A. No. I don't know that he read the letter. He spoke of it.

Q. He spoke of it?

A. Yes.

Q. Well, now, did you all discuss at the Parker meeting what to do about it?

A. Yes, we said we would use the proper procedure, and Article 42, the Firemen's agreement.

Q. All right.

A. Get together all the circumstances.

Q. You wanted to get together and agree to do something about it, didn't you?

A. Well, they knew the movements of the job, you see.

Q. Sir?

A. The hostlers know the movements of the job, or the firemen, they work them.

Q. Yes, sir, but I mean when you went to this meeting at Parker's house you went there and got together to do something about getting thos jobs restored, didn't you?

A. Well, about handling the case.

Q. What case?

A. Through the—this case of getting these jobs put back.

Q. That was the purpose of the meeting, wasn't it?

A. About getting pay for it, yes.

Q. You remember Mr. Kennedy being there, you say?

A. I do.

Q. And you recall that Mr. Kennedy gave some advice to the meeting, don't you?

A. Mr. Kennedy didn't say a word.

Q. Mr. Kennedy didn't say a word at the meeting?

A. He didn't say a word.

Q. You are sure of that?

A. I'm sure of it.

Q. That Mr. Kennedy didn't talk at that meeting?

A. No, he didn't talk.

Q. Now, Mr. Otts talked however, didn't he?

A. Yes, Mr. Otts had something to say.

Q. Did Mr. Southerland do any talking?

A. I don't know whther he did or not.

Q. Did Mr. Letchman do any talking?

A. I don't believe he did.

Q. You don't believe he did?

A. No, sir.

Q. Did Mr. Thomas do any talking?

A. Yes, but I don't remember what he said.

Q. Well, now, you remember nobody talking except Mr. Otts and Mr. Thomas?

A. McCutcheon had something to say.

Q. Sir?

A. Mr. McCutcheon had something to say.

Q. What did Mr. McCutcheon say?

A. He said it would take about 2 years to handle this case before the Labor Board, and he had an

extra job, that he could—he had three children, and he could get by, and he pointed over to me, and he says "Bill over there, he can draw his Unemployment." I said "That suits me," says, "I'll get by."

Q. Well, he said he had an extra job, didn't he?

A. Yes, sir.

Q. Mr. McCutcheon didn't make some remark about not wanting anybody to get in any trouble on account of his job?

A. No, I don't know anything about the trouble.

Q. Do you remember hearing him say something to that effect?

A. No.

Q. You don't remember that?

A. No, I did not, no, I don't know.

Q. Sir?

A. I didn't hear that.

Q. You didn't hear that?

A. No.

Q. You don't say he didn't make such a remark?

A. I wouldn't say it.

Q. All right, sir. Now, you were standing right by Mr. Kennedy, weren't you?

A. No.

Q. You were not?

A. No.

Q. Where were you standing?

A. I was standing by Mr. Thomas.

Q. With Mr. Thomas, excuse me?

A. Yes, sir.

Q. You say you were to get together and get some information, is that what the meeting was for?

A. Well, get together the circumstances to build a case and handle it.

Q. What circumstances?

A. Well, there's lots of them.

Q. What circumstances did you discuss there?

A. Well, there's one circumstance that down at the station they are paying firemen hostler helpers rates every day, and they are paying engineers firemen's rates every day. That's one of them.

Q. The men at that meeting knew that, didn't they?

A. Some of them didn't.

Q. Some of them didn't?

A. No.

Q. Who was going to hande this grievance, this case?

A. It would be handled by Mr. Otts here locally.

Q. Mr. Otts?

A. Yes, sir.

Q. Well, he knew that, didn't he?

A. Well, he could have known it.

Q. All right. You met to discuss the circumstances?

A. That's right.

Q. You yourself had handled grievances in the past, hadn't you?

A. Very few.

Q. You had handled grievances for other people, hadn't you?

A. Nothing more than a time claim maybe.

Q. How did you start a grievance?

A. Maybe it was turned down, and I didn't carry it any further.

Q. How did you start a grievance?

A. The way I started this on the time claim, I put up a claim for a day's pay on account of so and so.

Q. Yes, sir. At the time of that meeting you were familiar with that procedure, were you not?

A. Well, in a way. Of course, we—

Q. Haven't you testified, at the time of taking your deposition here, the pretrial deposition, that you had handled grievances yourself for other people?

A. No, I haven't, nothing only maybe they would ask me something about it.

Q. Well, they had asked you someting about it?

A. I don't have authority to handle them.

Q. I didn't ask you that. Didn't you tell the Commissioner when your deposition was taken that you had handled grievances yourself for other people?

A. I don't have that authority.

Q. I am not asking you that. I am asking you if you didn't testify under oath that you had?

A. I have had grievances, I mean cases maybe where there would be two or three, and I would get them to sign it and I would sign it.

Q. Let me ask you this, if this question or these questions were not asked you and these were not your answers? You have looked this deposition over before you came here, haven't you?

A. I looked over it a little, yes, sir.

Q. You reviewed your testimony, earlier testimony, have you not, sir?

A. Yes.

Q. This is the question:

"Q. And so the way that you would ordinarily handle this, that after you had missed a pay day you would go in and put in a time claim, wouldn't you?"

A. Yes, I would.

Q. And you answered:

"A. That's right."

A. That's right.

Q. Let me read these several questions and get your answers, please, sir:

"Q. And if the time claim would have been, if it would have been turned down, you would have taken that down and turned it over to your Local Chairman?

"A. That's right.

"Q. And you had handled it that way before, hadn't you?

"A. Yes, sir.

"Q. And most of the men had handled, or knew of the grievances being handled that way, hadn't they?

"A. Yes, sir.

"Q. And you had never had a meeting called before to handle any of your grievances or time claims before?

"A. I had never handled one before."

Now, just skipping one question. If they want to ask you that, they can:

"Q. You had handled time claims before, hadn't you?

"A. No, sir.

'Q. You had handled—

"A. Well, I had, I have handled different grievances before for somebody else.

"Q. You have handled different grievances before?

"A. Yes, sir."

Now, didn't you testify to that?

A. I did take up a case once for two other hostler helpers.

Q. Yes, sir, all right. They had changed jobs at the Yards before, hadn't they?

A. Who had?

Q. The Railroad; job changes had been made in the thirty some odd years you had been with the Railroad, had there not?

A. They made some job changes, yes.

Q. And on occasions there were grievances that came up on account of it, were there not?

A. Well, there were.

Q. Now, did you make a claim on account of your job here?

A. Yes, I made a claim on the 24th.

Q. You made a claim?

A. Yes, sir.

Q. After this strike was over?

A. After it was over.

Q. You put it in and let it go in through Mr. Otts, and it went on up, is that right?

A. That's right.

Q. Is that claim still pending?

A. Sure.

Q. And if you are entitled to be paid for that time you lost you will get it, is that right?

A. The whole time.

Q. Yes, sir, that's right.

A. Yes, sir.

Q If you are not entitled to it you won't, is that right, sir?

A. Yes, I won't.

Q. That is according to the agreement, is it not?

A. That's it.

Q. Now, at that meeting there was a discussion about what would be a better way to go at getting those jobs restored than taking it up through channels, wasn't it. Mr. Grissom?

A. I didn't hear it.

Q. You say you didn't hear it?

A. I didn't hear any discussion.

Q. You didn't hear any discussion of any other method except taking it through channels?

A. I hadn't.

Q. How long did the meeting last?

A. 30 minutes.

Q. About 30 minutes?

A. Yes, about 30 minutes.

Q. You were there the whole time?

A. I was there the whole time.

Q. And you don't recall anybody making any statement about any other method of handling the grievance other than taking it up through channels?

A No.

Q. That you have just told us about?

A. No, I didn't hear anything about it.

Q. You don't remember anybody in the meeting advising that it would be unwise to try any other method of getting those jobs restored?

A. Did not.

Q. You don't recall that?

A. I don't recall it.

Q. You do recall that Mr. T. A Kennedy didn't say anything at that meeting?

A He didn't say anything.

Q. He didn't say a word?

A. No.

Q. Were you near enough to Mr. Kennedy to hear Mr. Kennedy if he had talked?

A. I think so.

Q. Yes, sir, all right. You say you went home from that meeting and stayed at home until after supper?

A. Yes, sir.

Q. Then that night you went down to the L&N station?

A. I went to North Birmingham between 8:00 and 9:00 o'clock, a little after 8:00.

Q. You mean to take your cook or maid home?

A. That's right.

Q. Yes, sir. And when you got back to the house, you went back to the house first, didn't you?

A. Yes.

Q. Where do you live now?

A. 5332 5th Terrace South.

Q. You left your house and came downtown to the L&N station?

A. Well, not right immediately. I locked up my car and went in the house.

Q. After you did that—

A. I stayed a while.

Q. After you left the house where did you go?

A. I went down to the L&N station.

Q. Now you went in the L&N station, parked your car by the Superintendent's Office, and walked up under the shed you tell us?

A. That's right.

Q. Did you have any business down there at that hour of night?

A. I had heard a rumor.

Q. You had heard a rumor?

A. Yes, sir.

Q. Of what?

A. Some trouble.

Q. Did you hear the rumor was dow" at the L&N station?

A. They said on the L&N.

Q. They said on the L&N?

A. Yes, sir.

Q. You didn't go out to the Yard and check it out there, did you?

A. No, that was the nearest point.

Q. Your duties required you to report at the Yards, didn't they?

A. Roundhouse.

Q. At the roundhouse?

A. Yes, sir.

Q. Your duties were not down at the station, were they?

A. Yes, my duties was there too.

Q. You mean you reported for work at the L&N station?

A. Anywhere in the Terminal when I was working.

Q. It came as a surprise to you then that there was trouble?

A. It did.

Q. You had no idea of that?

A. No. I didn't.

Q. You went down there around 9:00 o'clock at night to the L&N station?

A. That's right.

Q. You found no one there and went back to Rex's Barbecue then?

A. That's right.

Q. You told Mr. Pettus you stayed up all that night?

A. I sure did.

Q. Until 6:00 or 7:00 o'clock in the morning?

A. You are right.

Q. You had worked that previous day from 7:00 o'clock in the morning, hadn't you?

A. I had.

Q. You had been up 24 hours by the time you left there that morning?

A. 24 hours.

Q. Sir?

A. That's right, about that.

Q. How old a man are you, Mr. Grissom?

A. 58.

Q. Did anybody tell you to stay there that length of time?

A. No, I was acting on my own.

Q. Acting on your own?

A. Yes.

Q. You wanted to help any way you could to carry out what you all had planned to do, didn't you?

A. Well—

Q. Sir?

A. No.

Q. You didn't want to help them?

A. Not on that.

Q. You didn't want to do anything, to have anything to do with any picketing, did you?

A. Pickets?

Q. Yes, sir.

A. I haven't seen any pickets.

Q. You never have seen any pickets?

A. No.

Q. You were standing there from midnight until 6:30 in the morning, but you were not picketing, is that what you tell us?

A. That's right.

Q. You were over by the gate opposite the Rex's Barbecue, weren't you?

A. At times I would walk over.
Q. You would walk over there?
A. Yes.
Q. Is that a different gate from the little footbridge gate?
A. There is two gates there.
Q. Yes. sir.
A. One was a footbridge.
Q There are two gates near Rex's Barbecue?
A. Yes, one is for automobiles, and the other one is a walkway, out to Rex's.
Q. Were people gathered at both those gates?
A. Yes, there were people there.
Q. They stood there all night?
A. Yes.
Q. And you stayed there with them?
A. Not over there. I stayed around there.
Q. You stayed in that area all night?
A. Yes.
Q You say nobody asked you to?
A. No.
Q. Nobody invited you to?
A. No.
Q. Now the next morning a shift came on at 7:00 o'clock, didn't it?
A. That's right.
Q. Men usually come in a little earlier, at 6:30 or 7:00, don't they?
A. That's the way they usually do.
Q. That morning some men came to work, didn't they?
A. You mean on Monday?
Q. Yes, sir.
A. I was at home in bed.

Q. You were there you say until 6:30 or 7:00 o'clock?

A. Oh, yes.

Q. Weren't you there until 6:30 or 7:00 o'clock?

A. I was there at 6:30, yes.

Q. Before you left some men had come in there to go to work?

A. Yes, sir.

Q. They had come up to the gate, hadn't they?

A. Yes, sir.

Q. And you saw those men come up to the gate and turn away and go back, didn't you?

A. No. This man didn't go up to the gate. I was on the front of the Coffee Shop there, about that post there, when he came up, near the highway.

Q. Which one?

A. Well, the one—you said there was men come up there, didn't you?

Q. Well, you saw people come up to the gate and turn away, didn't you?

A. No, they didn't go up to the gate.

Q. You never did see anybody go up to that gate that morning?

A. No.

Q. What about this man you are telling us about, who is that?

A. Mr. Red Wood.

Q. Mr. Wood?

A. Yes.

Q. What did Mr. Wood do?

A. He walked up and spoke to me.

Q. All right, sir. And then he didn't go in, did he?

A. He was there, that was his off day, Monday.

Q. Oh, that was his off day?

A. Yes.

Q. Where were you standing when you talked to Mr. Wood?

A. Standing, oh, you might say in front of Rex's, over near the highway there.

Q. Now, Mr. Wood hadn't been there all night, had he?

A. No, he just came up.

Q. And he had on his work clothes?

A. No, I don't think he had on his work clothes.

Q. You don't remember whether he had on his work clothes or not?

A. No.

Q. He had on his street clothes?

A. I believe he had on a jacket.

Q. All right. And he was due to go on that shift in the morning, wasn't he?

A. That was his off day.

Q. Wasn't he on the 7:00 o'clock shift?

A. That was his off day.

Q. Sir?

A. That was on Monday, that was his off day.

Q. Well, didn't he work the 7:00 o'clock shift, even if that was his off day?

A. Yes, sir.

Q. He was down there at 6:30 or earlier, on his off day?

A. Yes, sir.

Q. At the gate is that right?

A. He was on the south side of the highway.

Q. Now, Mr. Grissom, you went back to the station, you went to the L&N station, did you tell us, Tuesday night?

A. Tuesday at 6:00 o'clock.

Q. You didn't go down to the L&N station on Monday night?

A. Monday night?

Q. Yes, sir.

A. No, I wasn't down there on Monday night.

Q. Monday you got up around noon and went down to Rex's and stayed there from noon until 9:00 o'clock, is that what you told us a minute ago? Did you get there around 1:00 o'clock?

A. On Monday?

Q. Yes, sir.

A. Something like that. I know I slept that morning.

Q. Yes, sir, you went to sleep, and got up and came back down?

A. I got up and came back down.

Q. You stayed down there all that day?

A. Yes.

Q. Until midnight that night?

A. Yes.

Q. And Tuesday you went down to Rex's Barbecue and stayed all day, didn't you?

A. No, I didn't. I went out there that morning.

Q. Stayed all morning?

A. Yes.

Q. All right.

A. And part of the afternoon.

Q. A while in the afternoon?

A. Part of it.

Q. And all that time you were over by these gates, were you not?

A. Well—

Q. You were in the crowd of men around these gates?

A. There was crowds over there.

Q. Yes, sir.

A. Maybe I would step over and talk with them, and go back.

Q. There was a lot of whittling going on over there, wasn't there?

A. Yes, sir.

Q. A lot of the fellows had big hunks of cedar that they were whittling on?

A. They didn't whittle on the big hunks. They might bring out a big hunk and split it off.

Q. Some of those sticks were pretty good size, weren't they, Mr. Grissom?

A. No, what they whittled on is very small.

Q. Didn't you see some of them as big as a man's leg?

A. They wouldn't hold that up to whittle.

Q. Sir?

A. They wouldn't hold that in their hand to whittle.

Q. I am not talking about that, they had some pieces that big, didn't they?

A. They keep them in the cupboard, they have big pieces in the cupboard.

Q. They had them there when the whittling was going on, didn't they?

A. I don't recall any big rails or anything like that around there.

Q. No, sir, I am asking you, these big pieces that they cut the smaller pieces off of, they had some of them there, didn't they?

A. Well, they keep those in the cupboard.

Q. In the what?

A. In their cupboard, where they keep their clothes.

Q. You mean inside of the Yard?

A. Yes.

Q. Well, nobody went inside of the Yard and got cedars, did they?

A. They brought it out with them.

Q. When they came out the night before?

A. They carry it in their hip pocket, carry extra little pieces, see.

Q. Where did the big pieces come from?

A. They come from the rails they saw up.

Q. You mean laying out there by the gate right now, and were at that time, just laying around there on the ground?

A. No, they don't lay them around.

Q. Where did they come from?

A. Some of it come from Tennessee, in the country up there. I went up there in February and brought some back myself.

Q. Yes, sir.

The Court:

What did you use it for, just to whittle?

The Witness:

To whittle.

Q. Well, Mr. Grissom, now you went back down to Morris Avenue on Tuesday around 6:00 o'clock?

A. That's right.

Q. Did you talk to anybody down there during that time?

A. Yes, I talked to an old drunk. He was sitting under the shed there. He come out about every 30 minutes to get him a drink, and start a conversation.

Q. Where were you standing?

A. I was standing over about the meter there on the corner.

Q. On the corner of Morris Avenue and 20th?

A. Morris and 20th.

Q. You didn't go up under the shed?

A. No.

Q. You stayed there on the corner?

A. I stayed there on the corner, yes.

Q. All right, sir. Now, you stayed there from 6:00 o'clock until midnight, you say?

A. Around midnight.

Q. And except for that drunk did you see anybody or talk to anybody?

A. Well, there was people going in there, but I didn't have anything to say to them, I didn't know who they were. I believe Mr. Camp came up there. That was on Wednesday night.

Q. No, I am talking about Tuesday night now.

A. All right.

Q. Now, you have said you were waiting on a fellow named "Slim"?

A. That's right.

Q. You can't tell us any more about Mr. Slim, can you?

A. Well, he was going to bring me a letter. He said he thought he had one.

Q. That he had one?

A. But he didn't come around.

Q. And he told you that he was going to bring you a letter at Morris Avenue and 20th Street at what time?

A. 6:00 or after.

Q 6:00 or after?

A. Yes.

Q. Did he tell you he might be as late as midnight?

A. Well, he didn't say it would be that late, he said 6:00 or after.

Q. 6:00 or after?

A. That's right.

Q. After you had waited an hour did you make any effort to call him or anything?

A. I didn't know where to call him.

Q. You just stayed there for six hours waiting on "Slim"?

A. Yes.

Q. Did you go down there on Wednesday night and wait for him some more?

A. Sure did.

Q. He didn't tell you he would see you on Wednesday, did he?

A. He didn't say.

Q. He didn't say anything about that, but you just went down there on Wednesday?

A. I went down there to see.

Q. You mentioned a little earlier that you had no seniority for any job except as hostler helper?

A. That's right.

Q. Seniority is a matter of Union jurisdiction, isn't it?

A. That's a—Yes.

Q. In other words, under the Union rules there was no job you could fall back to, is that right?

A. That's right.

Q. Nobody at the L&N told you that you couldn't work on any other job; it was a Union matter, wasn't it?

A. The Company and the Union.

Q. Nobody at the L&N has told you that the Company would not otherwise be willing to give you a job, has there?

A. Well—

Q. They gave Mr. McCutcheon another job, didn't they?

A. They said I was terminated.

Q. You told us you couldn't go back to any other job?

A. That's right.

Q. That is because of the Union rules, isn't it?

A. That's right.

Q. Now, Mr. Grissom, you have been around here, you have been out to the Yards from time to time in the last year since this all happened, haven't you?

A. Oh, yes.

Q. These engines are still operating out there all right, aren't they? The herders have taken care of it, haven't they?

A. There is a difference in the operation.

Q. There is a difference, but they still operate the engines, don't they?

A. They still operate them.

Mr. Smith:

I believe that's all.

Re-Direct Examination.

By Mr. Pettus:

Q. The way they are operating now is dangerous, isn't it?

Mr. Simpson:

We object to that.

The Court:

I sustain the objection.

Mr. Pettus:

He asked if they were operating all right. We offer to show it is not all right. That is in response to his question.

The Court:

You will be permitted to show why they were not operating all right. I don't think you could reach the ultimate conclusion that it is dangerous.

Mr. Pettus:

All right.

Q. Just tell us how they are operating now, Mr. Grissom.

A. Well, they have put a laborer helping the outside hostler. And say for instance they have an outside move, it was my job to work that engine up, coal,—I mean fuel. sand, and see that it was supplied, and then go to the Yard. They are having a laborer work this engine up, get the fuel, sand, and see about supplies, and then they won't let him go to the Yard. They will send this hostler a half mile by himself, where he meets the herder, and the herder takes over and rides the footboard on the right side, no one on the left side And he delivers this engine, swaps, then carries one back to the shop. And then when he gets back to the shop the laborer, he takes over, and it's the work that I did for 30 years.

Q. When the hostler is riding on the right side of the engine, he can't see off of the left hand side of that engine, can he?

A. No.

Q. This man that you say that you saw on Monday, Red Wood, what craft is he in?

A. He is a machinist.

Q. He is a machinist?

A. Yes, sir.

Q. This letter that Mr. Smith asked you about that you were waiting for from "Slim", can you tell us something about what you expected out of that letter?

Mr. Simpson:
We object to that. That is an undisclosed state of mind, if the Court please.

The Court:
I sustain the objection.

Mr. Pettus:
We except and offer to show that it was.

The Court:
I sustain the objection.

Q. Now, Mr. Grissom, did you yourself, or did you authorize anybody to cause, on October 23, 1955, cause other employees of the Railroad Company, the Plaintiff, by means of intimidation or threats of force or violence, not to perform their duties with the Plaintiff?

Mr. Simpson:
We object to that as a conclusion of the witness.

A. I did not.

Mr. Simpson:
Invades the province of the jury and is a conclusion of the witness.

The Court:
It is not in rebuttal. I sustain the objection.

Mr. Pettus:

We except and offer to show that he has not. That's all.

Re-Cross Examination.

By Mr. Smith:

Q. The only time laborers have anything to do with those engines is in the roundhouse area, isn't it?

A. Sir?

Q. In the roundhouse itself is the only time laborers service those engines, isn't it?

A. In the roundhouse?

Q. Yes, they don't take them out in the switching service or out on the main line?

A. They have to take them out in the Yard to get fuel and sand.

Q. Sir?

A. They have to take them out in the Yard to get fuel and sand.

Q. They don't take them out and operate the switching duties, do they?

A. Yes, they operate them.

Q. They do?

A. Build four units.

Q. Laborers do that?

A. Yes.

Q. They ride on it all the time the engine is switching, is that right?

A. That was my job.

Q. Outside, do laborers go outside?

A. They can.

Q. I am not asking you that. You told us what they do, and I am asking you if they do.

A. The inside, there is two hostlers. If he goes out, they go.

Q. I am not talking about the inside hostlers, but about the outside hostlers. That is the only thing that was affected?

A. It has never been customary for a laborer to work with an outside hostler.

Q. Laborers don't do anything outside, do they? They don't get on the engine and ride outside, do they?

A. Well, they use them for that.

Q. Sir?

A. They use them for that sometimes in case we are sick.

Q. Oh, you mean back before this all came up?

A. Yes, sir.

Mr. Smith:
All right, that's all.

The Court:
Come down.

Mr. Pettus:
That's all.

(Witness excused.)

The Court:
Your next witness.

Mr. Pettus:
Mr. Pennington.

W. F. PENNINGTON, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:

Q. Will you state your name?

A. William Fred Pennington.

Q. Where do you live?

A. 3616 North 41st Street.

Q. Who do you work for?

A. L&N Railroad.

Q. What is your job?

A. Switch Foreman.

Q. Are you a member of a labor organization?

A. Yes, sir.

Q. What organization is that?

A. Brotherhood of BRT.

Q. BofRT?

A. Yes, sir.

Q. Does that mean Brotherhood of Railroad Trainmen?

A. Yes, sir.

Q. Is that a different organization from the Brotherhood of Locomotive Firemen and Enginemen?

A. Yes, sir.

Q. How many railroad men belong to the Brotherhood of Railroad Trainmen here in Birmingham, with the L&N?

A. Well, I couldn't answer that right offhanded, I would say there is between four and five hundred switchmen and I would say all of them other than—I wouldn't think there would be over twenty that didn't belong.

Q. It would be from four hundred to almost five hundred people?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. You are one of the Defendants in this case, aren't you?

A. Yes, sir.

Q. Are you the only switchman that is a Defendant?

A. Yes, sir.

Q. On October 23, 1955 were you working for the Railroad that day?

A. Yes, sir.

Q. What time did you go on duty?

A. 2:45 p. m.

Q. What was your job?

A. Yard Foreman on assignment No. 20.

Q. Where was that job performed?

A At the south end of the BM Yard.

Q. Was it a Yard job?

A. Yes, sir.

Q. You stayed in the Yard during the whole time, is that right?

A. I think so, my crew.

Q. Who else was on the crew with you?

A. I had a man in the long field. I believe it was A. C. Devers, and S. Norris following the engine. Ed Weldon was the engineer, I believe, and C. A. Myrick was fireman. I am not too sure about Myrick, whether he was or not, because he stays on the—there is two jobs that go to work down there, and I don't know particularly that he was on that job, but I think he was.

Q. In other words, you don't recall particularly that day whether he was there or not?

A. No, sir.

Q. But you think he was there?

A. No, sir, I sure don't.

Q. Now, did you work on that job until after dark that day?

A. Yes, sir.

Q. Did anything occur later that evening?

A. Yes, sir.

Q. What occurred?

A. Well, the men in general were all talking about this labor trouble, about the hostler helpers had been pulled off. Just everybody was talking about it.

Q. Did anything happen along between 8:00 and 9:00 or 10:00 o'clock that night on the job?

A. Yes, sir, about 9:00 o'clock there was somebody hollered "Labor trouble", and everybody begun to leave the Yard.

Q. Do you know who hollered "Labor trouble"?

A. No, sir, I don't.

Q. Where were you at the time you first heard that cry?

A. I was on the lead.

Q. You were on the lead?

A. Yes, sir.

Q. And with reference to the roundhouse, how far were you away from it?

A. I would say I was almost a mile from the roundhouse.

Q. Almost a mile?

A. Probably a mile.

Q. Where you were there were tracks all around you?

A. Yes, sir.

Q. Was it dark?

A. Yes, sir.

Q. Are there any lights on the Yard out there where you were?

A. There is supposed to be. There are lights out there, but about three-quarters or maybe more of the time they don't burn.

Q. Do you recall whether or not they were burning that night?

A. I don't recall whether they were or not, I just don't know. I don't much think they were.

Q. From what direction did this call of "Labor trouble" come?

A. Well, we have a place there where we parked our cars, and it was back out towards where our cars were, out in front of the office, kind of. I was to the side of the office, out to the side of the office.

Q. Could you see the person that called out?

A. I could see somebody, but I didn't know, I couldn't say whoever it was. I seen somebody out towards the cars. I don't know that—I couldn't say that they was the ones that said it. I just heard that, I don't know who said it or anything about it.

Q. Did you recognize the voice?

A. No, sir, I didn't.

Q. That called out?

A. No, sir, I didn't.

Q. What did you do and what did your crew do after you heard that call?

A. My two helpers started walking off, and I was talking, and I caught up with them and asked them where they were going and they said they were going home. I went to the Yardmaster, and that was Mr. Downey, R. B. Downey, and I told him me being the foreman on the job, I didn't know what to do, and he

said well he couldn't tell me what to do. And I told him, well, I says "I am going down to the main office and talk to Mr. Roy, the General Yardmaster, and me being foreman on the job, I don't want to just walk off and quit." And I did, I went to the main office.

Q. How far was the main office from there?

A. About a half a mile I would say.

Q. And do you know about what time you arrived at the main office?

A. I would say I got there about 9:10 or 15.

Q. What did you see when you got there?

A. There was a big bunch of men around the Yard Office.

Q. Were they all crafts?

A. Yes, sir.

Q. Did you see anything in the Yard Office?

A. I went in the General Yardmaster's Office and was talking, I just asked Mr. Roy what was going on, and he said he didn't know, and about that time the telephone rang, and he went to talking to somebody, and I stood there for a few minutes. I seen Mr. Mitchell. I was looking right through the end of what they call the General Office, where all the clerks and all were. I seen Mr. Mitchell on the inside of the other office.

Q. About how far away were you from Mr. Mitchell?

A. I was about as far away as from here to the back of this room.

Q. Was the room lighted there where you could see him?

A. Yes, sir.

Q. You know Mr. Mitchell?

A. Yes, sir.

Q. You know Mr. Roy?

A. Yes, sir.

Q. And did you see Mr. Mitchell doing anything then?

A. Well, Mr. Roy was still talking on the telephone, and he was talking about some cars, I took it to be railroad cars, and I just turned and walked out. I walked to the window, and the window was up right where Mr. Roy was talking, and I was looking through the screen, and I seen Mr. Mitchell either turn off an electric fan or light, I would say that it was the light, when he pulled the chain, or something, I would say he was turning out the lights.

Q. Did he stay there, or could you still see him or what happened to him there then?

A. Well, I walked on out in the crowd, and Mr. Mitchell came out, the lights went out after I got on around the side of the Yard Office and Mr. Mitchell came out of the Yard Office.

Q. After you had seen him did you walk straight on out then?

A. Yes, sir.

Q. And you met him?

A. Yes, sir.

Q. And he had walked out himself, is that right?

A. Yes, sir, he said "Boys, let's go."

Q. What's that?

A. Mr. Mitchell called out and said "Let's go."

Q. You went with him, did you?

A. Yes, sir.

Q. Where did you go?

A. I went down to Rex's Barbecue, had a sandwich, and stayed, I don't know just how long I stayed, not too very long, and went home.

Q. Were you in work clothes?

A. Yes, sir.

Q. You don't recall the hour that you went home, is that right?

A. No, sir, I sure don't. I might have stayed there an hour or an hour and a half, I just don't know how long I stayed.

Q. Now on Monday, what did you do, Mr. Pennington?

A. Well, Monday morning I carried the kid to school, went down to the main gate and stayed a while back to the house and stayed a while.

Q. Did you make any telephone calls?

A. Yes, sir, I made one Monday afternoon, or along a little after lunch, right after lunch.

Q. Who did you call?

A. I called Decatur, Alabama.

Q. And who did you talk to there?

A. I don't know who I talked to. I called the operator and asked for information, for Jack Coley of Decatur, and she looked and said she didn't have a number listed for Jack Coley, and I asked her to transfer the call to the L&N Yard Office in Decatur.

Q. Did you talk to somebody at the L&N Yard Office?

A. Yes, sir, I did.

Q. What was your conversation, just state what was your conversation?

A. I guess I told him who I was, I don't remember, I'm pretty sure I did, and I told him I was a switchman, I would like to talk to Mr. Coley, if he knew how I could get hold of him. He said that was Mr. Coley's off day, and he didn't know how to get in touch with him.

Q. In that conversation did you mention anything about whether there was a work stoppage on Monday in Birmingham so far as you knew?

A. Yes, sir.

Q. Did you discuss that work stoppage with the man?

A. I did not.

Q. You did not?

A. No.

Q. Then after this conversation with this man, what did you do?

A. Well, I was down at the gate that morning. I had talked to Mr. Bentley, and I had planned to go fishing.

Mr. Simpson:

I object to his plans, undisclosed state of mind, may it please the Court.

The Court:

I sustain the objection That is excluded.

Q. Well, did you see Bentley later that day?

A. Yes, sir.

Q Did you see anybody else later that day?

A. Yes, sir.

Q. Who was the other man?

A. Bruce Barnett.

Q. Did you stay in Birmingham or go somewhere?

A. I went to Decatur.

Q. You went to Decatur?

A. Yes, sir.

Q. Tell us what you did when you got to Decatur.

A. I went to the place where Jack Coley had lived, and found it vacant, and went back to the car. I looked into the window, and there wasn't any shades or curtains or any furniture or anything. And we went

from there to the Yard Office to see if somebody might know where I could find him.

Q. Is Jack Coley a man that you knew in Decatur?

Mr. Simpson:

We object to that as leading and suggestive.

A. Yes, sir.

The Court:

Overruled.

Q. Do you know any other Coley?

A. Yes, sir.

Q. Where?

A. Birmingham.

Q. Had you had any conversation with the other Coley that day?

A. I had, down at the main gate that morning.

Q. Now, when you went down there you say you went down to the Yard Office at Decatur?

A. Yes, sir.

Q. Did you see anybody there?

A. Yes, sir.

Q. Who did you see?

A. Well, there was a good many people there. I didn't see anybody that I know other than Mr. Toone.

Q. Mr. Toone, who is he?

A. He is a Special Agent for the L&N.

Q. Where was he when you saw him?

A. He was inside of the Yard Office.

Q. Was he armed at that time?

A. Yes, sir.

Q. Did you have any conversation with Mr. Toone?

A. Yes, sir, I did.

Q. Will you repeat that conversation?

A. I asked Mr. Toone how he was getting along, and I think I shook hands with him, that's about all, standing there talking to him, just, I don't know what all we was talking about, about how long it had been since we had seen one another.

Q. Did you have any conversation with anyone else there?

A. I asked if any of them knew where to find Jack Coley, and somebody told me that they didn't know where he might be found, that it was his off day.

Q. Now, you have seen these witnesses here that have testified in the case from Decatur?

A. Yes, sir.

Q. Do you recall talking to any of them, Mr. LeCroix, and one or two others?

A I didn't know any of them.

Q. You didn't know any of them by name?

A. No, sir.

Q. Did you have any conversation with anybody in the Yard Office with reference to the work stoppage in Birmingham?

A. I don't know whether I did, or who did. Some of the crowd did.

Q. Who was in the crowd with you?

A. Me, J. O. Bentley, and Bruce Barnett.

Q. The work stoppage was mentioned?

A. Yes, sir.

Q. And will you tell the jury, please, what the discussion was, and if you know who said it, say who the man speaking was?

A. I don't know who they were that was talking there, but they asked what was going on in Birmingham, and the fellows told them that there was a work stoppage in Birmingham, and they said "How do we know it is?" And some of them said, told them, 'Well, we've got a newspaper." They said was there any picket lines in Birmingham. I told them no, I says "There is not any picket lines out." They wanted to know what kind of labor troubles it was, and I said "All I know is what I have seen in the paper, and what I have heard before the strike." And somebody gave them a newspaper and they looked at it.

Q. Was the newspaper given to them by either Bentley or Barnett or yourself?

A. Yes, sir, one of us did, and I don't know who did it.

Q. Was there any further discussion there at the Yard Office that you recall?

A. Yes, sir.

Q. Just tell what it was.

A. Some one of the men wanted to know if we could—they said they was ready to come out, and said, asked us if we would go to the freight house and show it to the men up there. And we went to the freight house.

Q. They said show what to the men at the freight house, if anything? What did they say to show to them?

A. The newspaper.

Q. Did you go to the freight house?

A. Yes, sir.

Q. Who was with you when you went to the freight house?

A. Bruce Barnett and J. O. Bentley.

Q. Did you see anyone at the freight house?
A. Yes, sir.
Q. Do you recall who you saw there?
A. Yes, sir, one man.
Q. Who?
A. Mr. Toone.
Q. Was he down there at the freight house when you arrived?
A. Yes, sir.
Q. Did you have any conversation with him there?
A. Not that I remember.
Q. Did you have any conversation with anybody else at the freight house?
A. Well, nothing only just showing them the paper, and they was asking about the work stoppage.
Q. And did Bentley or Barnett have any conversation there that you recall?
A. Not that I heard other than just around that paper.
Q. How long did you stay at the freight house?
A. I would say about five minutes.
Q. About five minutes?
A. Yes, sir.
Q. Did anybody at the freight house have any remarks about the work stoppage?
A. Well, they all seemed like they was ready to quit anyhow.

Mr. Simpson:
We object to what they seemed like.

The Court:
I sustain the objection.

Q. Did anyone express themselves there, did anyone express themselves there, say anything?

A. Yes, they said, some of them said "Well, I'm ready to go home, that's good enough for me." They said 'They're not working in Birmingham, we shouldn't be working here."

Q. Was the paper shown at the freight house?

A. Yes, sir.

Q. The newspaper?

A. Yes, sir.

Q. Then after that remark was made did you stay around the freight house?

A. No, sir, I left.

Q. And did Bentley and Barnett leave with you?

A. Yes, sir.

Q. Was Mr. Toone there at the freight house all the time that the conversation was going on?

A. Yes, sir, he sure was.

Q. Now, Mr. Pennington, how much is your daily pay with the L&N?

A. Well, it's different. If I work a foreman's job, I hold foreman's age. I think a switchman—I'm on a foreman's job now, $19.82 I believe.

Q. $19.82?

A. Yes, sir.

Q. As a switchman, what do you earn?

A. $18.55 I think.

Q. $18.55?

A. I am not too sure about that.

Q. You haven't been paid for these days that the Railroad wasn't working during the work stoppage, have you?

A. No, sir.

Q. Now, in the complaint here they charge that you conspired, combined, conspired or combined to interfere with the Plaintiff's business, and that pursuant to that conspiracy or combination you intentionally, and without just cause, interfered with and prevented Plaintiff from carrying on said business, in that you caused other employees of Plaintiff, by means of intimidation or threats of force or violence not to perform their duties that day. Did you do any of those acts?

Mr. Simpson:
We object to that as a conclusion of the witness.

The Court:
That calls for a conclusion.

A. I did not.

The Court:
That is one of the main things we are trying, that is the main thing that we are trying with the jury here.

Mr. Pettus:
We except.

Q. Now, Mr. Pennington, is that the deposition that the Railroad lawyers took from you on November 29, 1955, or a copy of it? (Indicating) In other words, you can glance at that. Is that your testimony there?
A. Yes, sir.
Q. Now, that was in 1955, is that right?
A. Yes, sir.
Q. On November 29?

A. Yes, sir.

Q. Now, on February 10, 1956 did the L&N Railroad Company write you that letter (indicating)?

A. Yes, sir.

Mr. Pettus:

We offer this letter in evidence.

Mr. Simpson:

Let me see it just a minute.

Mr. Gibson:

I would like to see it.

Mr. Simpson:

We object to this, as immaterial. We object to it as being immaterial.

(Defendants' Exhibit No. 4 was marked for identification.)

The Court:

Well, I sustain the objection. I don't believe the letter is material.

Mr. Pettus:

We except.

Q. Now, Mr. Pennington, have you gotten a promotion since this work stoppage?

Mr. Gibson:

We object to that.

A. I have in one way; and in one way I have not.

The Court:
I sustain the objection.

Mr. Pettus:
We except.

Mr. Smith:
And move to exclude the answer.

The Court:
That is excluded, gentlemen.

Mr. Pettus:
That's all.

Cross Examination:

By Mr. Simpson:
Q. Mr. Pennington, you are what age?
A. 31.
Q. Are you a strong, able-bodied man?
A. Well, I wouldn't say I'm too strong.
Q. Well, you are not sick in any way, are you?
A. I don't feel so good today.
Q. What do you weigh?
A. I weigh 152. I weighed this morning.
Q. In general is your health good?
A. Yes, sir.
Q. Was it in October, of last year?
A. I would say so.
Q. You told us that you hadn't heard anything about any work stoppage or labor trouble out there, but that you had been hearing, I believe you say, it being talked around the Yards, about labor trouble all day?

A. Yes, sir.

Q. That you were working out there that afternoon, on Sunday the 23rd of October?

A. Yes, sir.

Q. In that deposition that Mr. Pettus showed you there, that you made about a month after this thing occurred, were you asked these questions and did you make these answers?

Mr. Pettus:

Will you tell me what you are reading from?

Mr. Simpson:

Page 18, at the top. Question "Had anybody told you there would be labor trouble that day?", and did you answer "No, sir."

"Q. Had you heard anybody say there would be labor trouble that night?

"A. No, sir.

"Q. You knew nothing about any walkout coming, or being planned?

"A. No, sir.

"Q. Or being expected?

"A. No, sir."

Did you make those answers?

A. I probably did.

Q. You probably did. All right.

Now turn to page 17 there, Mr. Pettus.

"Q. You told us that the thing that caused you to come out of there that night was somebody hollered 'Labor trouble'?

"A. That's right.
"Q. Was that all that they hollered?
"A. Labor trouble, get out of the Yard.
"Q. Get out of the Yard.
"A. Yes, sir."

Q. Well, you forgot that a while ago, didn't you, that "Get out of the Yard" part?
A. I don't know whether I stated that or not.
Q. Oh, you just omitted that a while ago, but that was what was said, wasn't it?

Mr. Pettus:
We object to that as argumentative.

The Court:
I sustain the objection.

Q. That was what was said that night, wasn't it?

Mr. Pettus:
We object.

The Court:
I overrule the objection.

Q. "Get out of the Yard", wasn't it, "Get out of the Yard" was hollered at you, wasn't it?
A. Somebody hollered "Labor trouble, get out of the Yard."
Q. "Get out of the Yard." Now, that "Get out of the Yard" is what took you out, wasn't it?
A. Not necessarily.
Q. Not necessarily?
A. Labor trouble took me out of the Yard.

Q. What?

A. Labor trouble took me out of the Yard.

Q. I say they hollered "Labor trouble, get out of the Yard"?

A. Yes, sir.

Q. That's what you told in this examination that they hollered, didn't you?

A. Yes, sir.

Mr. Simpson:

All right. All right, sir. I'm trying to save a lot of time, Your Honor, and just ask him the material things here that I want to ask him about.

Q. Your crew said they were afraid to stay in there, didn't they, Mr. Pennington?

A. No, sir.

Q. What?

A. They did not.

Q. They did not?

A. If they did I didn't hear them.

Q. I will ask you if on that same examination about a month after this thing happened you were asked these questions and made these answers, "How far from you at the time you saw them—how far from you at the time you saw them walk off?" Referring to the members of your crew.

Mr. Pettus:

What page is that?

Mr. Simpson:

That is page 22. I beg your pardon.

"A. Close enough to talk to, talking distance.
"Q. Did you talk to them?
"A. Yes, sir.
"Q. What did you say to them?
"A. I asked them if they were going to leave, and they said yes, that they were afraid to stay."

Did you make those answers, did your crew tell you that night that they were afraid to stay?

A. I don't remember them telling me they was afraid to stay.
Q. If you testified that a month after this thing happened, it was fresher in your mind then that it is now, wasn't it?
A. It could have been.
Q. Will you say you did make that answer at that time?
A. I don't know.
Q. Do you want to look at your record here and see?
A. I probably made it.
Q. You probably made it. All right. What is your statement now to the jury?
A. I don't remember of them, hearing them say they were afraid to stay.
Q. If you told this at that time it was fresher in your recollection, and you, would you say that this was probably true, wouldn't you?
A. It could be.
Q. All right now, were you scared?
A. No, sir.
Q. You were not scared at all?
A. No, sir.

Q. But your crew was; that is your present impression?

A. I don't know whether they was or not.

Q. All right. Now then, you tell the jury that you saw Mr. Mitchell turn out one light, is that right?

A. He either pulled the—he pulled the chain and the light went out, or he had his arm up, and I couldn't say for sure that he turned out a light, but I would say under oath he turned out two lights, I am sure.

Q. You testify under oath he turned out two lights?

A. That's right.

Q. Do you know where the light switch is in that Yard Office?

A. I do not.

Q. Where Mr. Mitchell and Mr. Duncan that testified here yesterday—you heard Mr. Duncan testify yesterday?

A. Yes, sir.

Q. Where the switch was?

A. I heard him testify.

Q. Do you know where the switch is at the powerhouse that turns off the lights in the Yard?

A. I have never been inside of the powerhouse, other than just in front of it, to get a watch repaired.

Q. What you say now is that you saw Mr. Mitchell turn off as many as two lights?

A. I think I did. It sure looked a lots like it, if he didn't.

Q. Did you testify here, on page 31, or beginning on page 32, "Question. What light", referring to Mr. Mitchell:

"Q. What light was he near?

"A. I don't remember. I can show you. It would be just like you walked by each light, and when you

came to them you would turn them out I seen him turn out three or four."

Did you say that?

A. Yes, sir.

Q. Three or four?

A. Yes, sir.

Q. He just went around turning out the lights one by one in that office, did he?

A. Yes, sir.

Q. You saw him turn out three or four?

A. I seen him turn out at least two I know of. Or he could have been turning off an electric fan, but as he pulled something the light would go out.

Q. Was there any electric fan running out there in October?

A. I don't know. They've got them in the office.

Q. All right.

A. I don't know if they was running or not.

The Court:

You were outside I believe you said when the main lights went off, were you?

The Witness:

Yes, sir.

The Court:

Yard lights?

The Witness:

Yes, sir.

Q. You say you were not afraid to work in there at all that night?

A. I wasn't afraid to work.

Q. Were you asked this question, and make these answers:

"Q. If you had heard me come down there and stand down where the cars were and holler 'Labor trouble, clear out the Yard' you wouldn't have paid much attention to that, would you?"

And your answer was: "Repeat that."

"Q. It would depend on who made the statement whether you would pay any attention to it at all?

"A. Not necessarily. If they hollered 'Labor trouble get out of the Yard' I would confer with somebody, and if they left I would leave too, because it's dangerous."

Did you say that?

A. I probably did. It could be dangerous, but that don't mean I was afraid.

Q. Oh, you are not afraid of danger?

A. Yes, sir, I am afraid of danger.

Q. Then you were asked the question:

"Q. Why is it dangerous?

"A. Well, you read in the paper where people get hurt.

"Q. Do you understand—"

Mr. Pettus:

We object to this. What page are you reading from?

Mr. Simpson:

41, a continuation of what I was just reading. "Well, you read in the paper where people get hurt."

Mr. Pettus:

We object to that, what he reads in the paper, incompetent, irrelevant and immaterial, a mental operation.

The Court:

I sustain the objection.

Q. But you did say because, Mr. Pennington, you would not stay there because it was dangerous, didn't you?

A. Ask the question again, please.

Q. Did you make this answer, "If they hollered 'Labor trouble, get out of the Yard' I will confer with somebody, and if they left I will leave too, because it is dangerous." You said that, didn't you?

A. Well, labor trouble always seems to be dangerous.

Q. I see, all right. Now then, Mr. Pennington, did you see any pickets during that strike?

A. No, sir.

Q. You knew that men stood around each entrance, didn't you?

A. I seen a lot of men around every entrance I went to.

Q. They stood there in shifts, day and night, didn't they?

A. I wasn't down there any all during the time of the night.

Q. All the time you were there you saw them standing at these entrances, didn't you?

A. Yes, sir, a lot of people, of all crafts.

Q. There were some that stayed there regular hours and then were relieved by others?

A. I couldn't say they did. I don't know about that.

Q. You can't say about that?

A. No.

Q. But you saw them all hours you were there?

A. Every time I went to one of the entrances there was people there.

Q. You saw them standing down there at the corner of Morris Avenue and 20th Street?

A. I don't recall even being down there.

Q. Did you see them standing at the entrance to the Superintendent's office down here on Morris Avenue?

A. I don't remember being down there during the strike.

Q. You can't say about that?

A. No, sir.

Q. What do you call a picket?

A. A man with a sign.

Q. A sign?

A. Yes.

Q. In other words, if a man hasn't got a sign you don't consider him a picket, is that right?

A. No, sir.

Q. A man stands there and tells you you can't go, or you can't go in only on certain conditions, or "I will", or "Will not let you in", you don't regard him as a picket, do you?

A. I didn't have any conversation like that.

Q. I say if a man—

Mr. Pettus:

We object to that.

Q. I am just trying to get what you mean.

Mr. Pettus:
Hypothetical.

The Court:
I overrule the objection.

Q. I am just trying to get what you mean by "picket".

Mr. Pettus:
We except.

Mr. Simpson:
This is cross examination, Your Honor.

The Court:
Overruled.

Q. I am trying to get what you mean by a picket. When you say there were not any pickets, you mean there wasn't anybody carrying signs around?

A. I don't know if there was a picket on the Railroad at any time.

Q. I say is that what you mean by a picket, is a man with a sign, unless he has got a sign you don't regard him as a picket?

A. No, sir.

Q. Now, Mr. Pennington, when you were first asked about making a phone call to Decatur in this examination a month after it happened, you denied it, didn't you?

A. I don't know if I did or not. I didn't know right off—I knew I called Decatur, but I didn't know just when I did. You refreshed my memory on that.

Q. You were refreshed by being reminded that the Telephone Company had a record of all long-distance calls, and then you said you made one?

A. I understand they keep records.

Q. And after that was called to your attention you then admitted you made one?

A. I didn't care who knew I made a phone call.

Q. I say after that was called to your attention, you then admitted you made a phone call, didn't you?

Mr, Pettus:
We object to that as an argument.

Mr. Simpson:
That's not an argument.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Weren't you asked this question, first, on page 68, "Did you make any phone, telephone calls at all to Decatur on that day", referring to that Monday, and did you answer "No, sir"?

A. I knew I had made a phone call, but I didn't remember it at that time, because it wasn't an important call.

Q. You didn't remember it until somebody said to you, why, they keep a record of long-distance telephone calls, and then you remembered it, didn't you?

A. I don't know that I did.

Q. All right. Now, on that telephone call you say you talked to the Yard Office?

A. Yes, sir.

Q. There at Decatur?

A. Yes, sir.

Q. Now you say that the reason you talked to the Yard Office was that the telephone directory at Decatur, the telephone operator up there told you there wasn't any Jack Coley listed in the telephone directory?

A. She sure did.

Q. Of course, you were not up there looking at the telephone directory, but you are telling this jury that the telephone operator up there told you that they didn' have any telephone listed for Jack Coley?

A. She said they didn't have any telephone listed, or no answer or something, that I couldn't—

Q. Oh, just "something." Now, you told us a while ago, didn't you, you told this jury under oath—

A. I would say she said she didn't have any telephone listed for Jack Coley.

Q. Will you look at this telephone directory that was effective October, 1954, and remained in effect until the next one went into effect in 1956, for Decatur, Alabama, and see if you don't see Mr. Jack Coley listed there at 511 Prospect Drive Southeast, at 2355?

A. I see it.

Q. You see it?

A. Yes.

Mr. Simpson:

We would like to tear that sheet out.

A. How do I know his—

Mr. Simpson:

And submit it in evidence, or we will put in the whole directory, so that there will be no dispute about what it was.

(Plaintiff's Exhibit No. 8 was marked for identification.)

Mr. Simpson:

We had better put in the next one that superseded that, January, 1956, to show that that was in effect at the time that telephone call was made.

(Plaintiff's Exhibit No. 9 was marked for identification.)

Mr. Simpson:

All right, sir.

Q. Now you say you admit that you did talk to the Yard Office up there, but you say that all you said was "This is W. F. Pennington. Do you know where Jack Coley is?"

A. I don't know for sure that is the exact words that I said. I asked them about Jack Coley.

Q. You heard the witness LeCroix testify day before yesterday, didn't you? You were sitting here in the Courtroom?

A. Yes, sir.

Q. You heard him say, didn't you, that you said to him "This is W. F. Pennington at Birmingham, and there is a bunch of us coming up there"?

Mr. Byrd:

We object to that, if Your Honor, please.

Mr. Simpson:
Wait a minute.

Mr. Byrd:
That was excluded from the testimony at that time.

The Court:
Overruled.

Mr. Byrd:
We except.

Q. "And we don't want to find you at work when we get up there"?
A. I didn't say anything like that.
Q. You heard Mr. LeCroix say that?
A. I can't help what he said; I didn't say that
Q. All right, but you did talk to somebody in the Yard Office?
A. Yes, sir.
Q. On that Monday afternoon?
A. Yes, sir.
Q. And you claim all you said to this man in the Yard Office was "This is W. F. Pennington. Do you know where Jack Coley is", that's all you said?
A. Well, something along that line.
Q. Something along that line?
A. Yes, sir.
Q. Now, when you got up there—let me ask you this first, did you say in that telephone conversation specifically these words: "When I get up there I want Oakworth to be out"?
A. I did not.
Q. Now, when you were asked that question a few weeks after this thing happened, I will ask you

whether or not you answered "No, sir, not that I remember"?

A. I don't know what my answer was then.

Q. Is your memory stronger about it now on trial than it was when this deposition was taken?

Mr. Pettus:
We object to that as argumentative.

The Court:
That is an argument. I sustain the objection.

Mr. Simpson:
All right.

Q. Has anything happened since that time to make your memory better about this thing?

Mr. Pettus:
We object to that.

A. I wouldn't think so.

The Court:
I sustain the objection.

Q. Now, on that examination were you asked these questions?

Mr. Pettus:
What page?

Mr. Simpson:
Page 77, Mr. Pettus.

"Q. You didn't tell him you wanted to find those people out of there when you got there?

"A. No, sir, not that I remember, anything like that.

"Q. Well, I am trying to get you to tell us definitely, Mr. Pennington, and I want to go over it again. You would remember a conversation as important as telling a man to stop working for your employer, wouldn't you?

"A. I don't know whether I would or not."

Were you asked those questions, and made those answers on November 28?

A. I don't remember them right off.

Q. Will you say you did or did not make those answers?

A. I didn't say it.

Q. You didn't make those answers?

A. Ask me that question again.

Q. You read what I read, didn't you?

A. I didn't say anything like that over the telephone.

Q. I say you heard what I read?

A. Yes, sir.

Q. I am asking you if you made that sort of an answer, that you don't know whether you remember telling this man to get out of there or not; did you make that answer on November 28 when this deposition was taken?

A. I probably did. I don't know right off.

Q. You probably did?

A. Whether I did or not, about that.

Q. Well in answer to the question on page 78 "Did you mention walkout or work stoppage in any way"? And did you answer "Not that I remember"?

A. I don't remember making any—

Q. You say now positively you didn't mention work stoppage, don't you?

A. I don't remember making it. There was three of us, and all we did was to show a newspaper.

Q. I am referring to the telephone call.

A. Oh, excuse me.

Q. I am referring to the telephone call. Do you say now that you did not make that, or do you just say you don't remember making that statement?

A. I would say I didn't make it. I think I would remember it if I would say anything like that, I would remember it I think.

Q. Sc your answer is today not that you don't remember whether you made it or not, but your answer is today that you did not make it?

A. I did not make it.

Mr. Simpson:

All right.

The Court:

Gentlemen, we are going to take a 20 minute recess.

(A short recess was had.)

The Court:

All right, Mr. Simpson.

Q. Now, Mr. Pennington, when you got up there you went first to the Yard Office, didn't you, out about a mile away from town?

A. No, sir, I didn't.

Q. You claim you went up to see Mr. Jack Coley's house and found nobody at home, is that right?

A. That's right.

Q. All right.

A. I found nobody lived there.

Q. Then you went right straight to the Yard Office?

A. Yes, sir.

Q. When you went in that Yard Office I will ask you whether or not, when you walked in you looked around and said "Where is that man I talked to a while ago and told him to clear this place out"?

A. I didn't say that.

Q. Then did you begin pointing your finger, and counting around at the men that were sitting there at that desk, some five or six of them?

A. If I had I would have known how many was in there. I didn't do that.

Q. Did I ask you how many were in there?

A. Yes, sir, I think so.

Q. Did I? Your memory is a lot better than mine because I don't remember having asked you that. You pointed to those men, didn't you?

A. No, sir.

Q. And said "Where is that man I have been talking to"? "Where is that man I talked to a while ago and told to clear out this office", didn't you?

A. No, sir.

Q. You are positive of that now, are you?

A. I think I would have remembered it if I had said that.

Q. There is not any doubt about that in your mind? You didn't say that?

Mr. Byrd:

We object to that, argument

The Court:
Sustained.

Q. I will ask you whether or not about a month after this thing happened, on page 90, your memory was so good about that. Let me ask you if you were asked these questions and made these answers:

"Q. I am asking you if you said to those people 'Where is the man I called and told to get this office cleared out' "?

And did you answer:

"A. I don't remember saying that.
"Q. Did you say that or that in substance?
"A. I don't understand that question.
"Q. Did you say anything that meant that?
"A. What?
"Q. 'Where is the man I called and told to get this office cleared out'?
"A. I don't remember saying any such thing as that
"Q. I will ask you if you had said anything like that, for the purpose of running men off the job, you would remember it?
"A. I think I would.
"Q. You would, wouldn't you?
"A. I don't remember saying anything like that."

Were you asked those questions?

Mr. Pettus:
The last answer is "I don't remember saying any such thing."

Mr. Simpson:

"I don't remember saying any such thing."

Q. Were you asked those questions and did you make those answers?

A. I think I did.

Q. Yes.

A. There is a lot of that book there. I don't know right off what all I said in that book.

Q. Is your memory better today than it was a month after this thing happened about what was said?

Mr. Pettus:

We object to that as argument.

The Court:

Sustained.

Q. I will ask you this question, has anything happened in the meantime to give you more information about what you said up there on that occasion?

A. I wouldn't think so.

Q. All right. Now then, I will ask you whether you saw Mr. Hardwick, the Agent, up there at Decatur on that trip?

A. I don't know whether I did or not. I don't know Mr. Hardwick.

Q. Did you see an elderly man who had had a heart attack, and was very pale and emaciated, sick looking?

A. I don't know anything—whether I did or not.

Q. You didn't know whether you saw him or not?

A. I don't know anything about anything like that.

Q. You don't know whether you saw him or not. Did you tell this man Hardwick, who was the Agent

there, and was in the freight office when you got over to the freight house "I let you off once, and I am telling you, I am not going to let you off again"? Did you make any such statement as that to Mr. Hardwick?

A. I did not. I didn't know Mr. Hardwick, I didn't make that statement to anycody.

Q. You are positive of that. Well now, were you asked this question and did you make these answers on November 29 when you were examined here last year, "Question: Did you tell Mister—"

Mr. Pettus:
What page?

Mr. Simpson:
Page 104. "Did you tell Mr. Hardy"—Your Honor, that is a stenographic error, it should be Hardwick.

"Q. Did you tell Mr. Hardy or any man up there 'I let you off once, and I am telling you I'm not going to let you off again?

"A. I don't remember telling anyone that.

"Q. Did you say that or in substance, do you recall saying that?

"A. I don't understand that question."

Mr. Pettus:
Where are you reading from?

Mr. Simpson:
104, the second question down.

Mr. Pettus:
All right.

Mr. Simpson:
And you said:

"A. I don't understand that question.
"Q. What do you mean, you don't understand?
"A. That question you asked me.
"Q. Did you tell Mr. Hardy or any man 'I let you off once, and I am telling you I am not going to let you off again'?
"A. I don't remember saying any such thing to anybody at any time like that.
"Q. That would have been a threat, wouldn't it?
"A. It sounded like one.
"Q. If you made a threat you would have remembered that?
"A. Yes, sir, I think so.
"Q. You wouldn't tell us you didn't make that statement?
"A. I don't remember saying that to anybody."

Were you asked those questions and did you make those answers about a month after this thing happened?

A. I believe you asked me that.
Q. And you made those answers, did you, that I have read?
A. Yes, sir. I still don't remember saying anything like that.
Q. Well, you say today that you didn't say that, don't you?
A. I say I didn't say it. If I had said anything like that I would have remembered it.
Q. All right. Now then, do you know Mr. Petty, the chief clerk there in the freight office?

A. No, sir, I don't.

Q. Do you remember the gentleman who testified here on Monday afternoon, and we put him on out of order, so he could get back to Decatur and let Mr. Long and the other men come down here? You saw him in the Courtroom here?

A. I remember the guy that said he was Mr. Petty?

Q. Now remember the guy that said he was Mr. Petty?

A. Yes, sir.

Q. All right. Did you say anything to Mr. Petty about what you had done to him in the 58 day strike?

Mr. Pettus:

We object to that incompetent, irrelevant, and immaterial. He has asked if he knew Mr. Petty, and that's the only purpose it was admitted for.

The Court:

There is a question of identification involved.

Mr. Simpson:

Yes, sir.

The Court:

Overruled.

Mr. Pettus:

We except.

The Court:

It is admitted and limited for that purpose only.

Mr. Simpson:

I am asking him now about what he said on that occasion, Your Honor, what he actually said on the occasion when he went in the office.

The Court:

Yes.

Q. Did you say to Mr. Petty that you let him off light on the previous occasion, but you wouldn't do it any more?

A. I don't think I have ever seen Mr. Petty before, before he got on the stand. If I have, I don't remember it.

Q. You heard what Mr. Petty said that you said to him, didn't you?

A. Yes, sir.

Q. Do you now deny that you said that to Mr. Petty?

A. I am denying it. I didn't say anything like that.

Q. You didn't say that to Mr. Petty?

A. No, sir.

Q Or that in substance?

A. That's the first time I had ever seen him, the only time I ever knew that he was Mr. Petty is when he was up here and said he was Mr. Petty.

Q. Do you deny that you saw that man, that chief clerk, in that office when you went in there that afternoon?

A. I don't know, I don't remember seeing him .I don't know the man.

Q. I will ask you whether or not on that examination a few weeks after this thing happened, last fall, you were asked these questions and made these answers.

Mr. Pettus:
What page is that?

Mr. Simpson:
Page 104 at the bottom, "Did you know anything about Mr. Petty having been beaten up during the 58 day strike?"

Mr. Pettus:
We object to that.

Mr. Simpson:
Answer "No, sir."

Mr. Pettus:
As to what he knew about it.

The Court:
I sustain the objection.

Mr. Simpson:
All right, beginning on page 105:

"Q. Do you know Mr. Petty?
"A. No, sir.
"Q. Did you know a man was beaten up during the 58 day strike?"

Mr. Pettus:
Now, we object to that, "Do you know a man that was beaten up during the 58 day strike", incompetent, irrelevant, and immaterial.

The Court:
I sustain the objection.

Mr. Simpson:
We except.

Q. Were you up there on an occasion that a man was beaten up during the 58 day strike near the Yard Office?

Mr. Pettus:
We object to that on the same ground.

The Court:
Sustained.

Mr. Simpson:
We except.

"Q. Were you near there at that time", and did you answer "I don't remember that."
Was that what you said, that you just didn't remember whether you were up there when a man was beaten up or not?

Mr. Pettus:
We object to that, argumentative.

The Court:
Sustained.

Mr. Pettus:
On the ground it is incompetent, irrelevant and immaterial.

Mr. Simpson:
We except.

Q. As Mr. Petty was walking out of the office up there did you ask him if he was coming back to work the next day?

A. I didn't ask anybody if they was coming back the next day.

Q. Did Mr. Petty say to you, as he said there on the stand, "I'll just have to wait and see"?

A. I didn't know Mr. Petty until he testified.

Q. Did anybody—

A. No, sir.

Q. Did Mr. Petty or anybody else have this conversation with you?

A. No, sir.

Q. And did you say to him "Well, you better not, I let you off light before, and I'm not going to do it again"?

A. I didn't say anything like that.

Q. I will ask you whether or not you had, within six months of the time that you made this visit to Decatur, hit Mr. Petty as he was sitting in his automobile and knocked him unconscious there at the Decatur Yard?

A. I certainly didn't.

Q. You tell the jury that you did not strike Mr. Petty?

A. I did not strike Mr. Petty. If I had got that close to him I would have known him before yesterday. I never seen the man before that I remember until yesterday or day before when he testified.

Q. Did you within six months of the time you made this trip there on November 24 up to Decatur, did you walk up to a car where a man was driving into the L&N property there, within six months prior to the time you made this trip in October, and hit him and knock him unconscious, then open the door,

and drag him out and leave him there lying on the street?

Mr. Pettus:
We object to that, some unidentified man, incompetent, irrelevant and immaterial.

The Court:
Overruled.

Mr. Pettus:
We except.

Q. Did you do that?
A. I did not.
Q. Mr. Petty or anybody else?
A. Nobody.
Q. All right. You say you know Mr. Toone, don't you?
A. Yes, sir.
Q. And you saw Mr. Toone there on this occasion, and about all you say you did with Mr. Toone was to shake hands with him?
A. I talked to him.
Q. I will ask you whether or not you said to Mr. Toone this, or this in substance on the occasion of your visit to that Yard Office—no, this was at the freight office, on October 24, 1955: "If you fire this time", or in this strike, "Its not going to be like it was before, you'll fire in hell, because I'm going to kill you"?
A. I didn't say anything like that.
Q. You didn't say that to Mr. Toone?
A. No, sir.

Q. The Special Agent on that occasion?

A. I would look a little silly, him with a gun, and talking to him like that, wouldn't I?

Q. I am not asking you whether you look silly or not, you understand that. I'm asking you if you said that to Mr. Toone?

A. No, sir.

Q. On that day?

A. I did not.

Q. "If you fire, you'll fire in hell"?

A. No, sir.

Q. You heard Mr. Long say that he heard you say that here the other day?

A. I heard him.

Q. You saw Mr. Long, didn't you?

A. Yes, sir.

Q. He testified here on the stand?

A. Yes, sir.

Q. Now, did you say what I asked you, or that in substance? Mr. Gibson calls my attention to the fact that I may not have got the words accurately that Mr. Long said. But did you say that in substance?

A. I didn't say anything that I would care for the whole United States, men, women, little children and everything hearing, in Decatur at no time.

Q. Did you say to him in substance that if you fire this time—did you say to him "You fired in the 58 day strike, and if you fire this time one of us will be firing in hell, because I'm going to kill you"?

A. I didn't even know he fired in the 58 day strike, and I didn't say that.

Q. Now, I will ask you if on your examination in November, of last year, about what happened up there on this occasion, if you were asked these questions and you made these answers.

Mr. Pettus:
On what page?

Mr. Simpson:
Beginning on page 101, at the top of the page: "Did you make a statement to Mr. Toone about what he had done in the April strike?"

Mr. Pettus:
We object to that, repetitive.

Mr. Simpson:
Talking about what statements he made on this occasion.

Mr. Pettus:
He has been over it several times.

The Court:
I overrule the objection.

Mr. Simpson:
I haven't been over it about Mr. Toone with him before.

"A. I don't remember saying anything about anything in the April strike.
"Q. Do you remember Mr. Toone worked as a fireman in the April strike.
"A. I don't know about that.
"Q. You know he did work as a fireman?
"A. I don't know no such.
"Q. Did you tell him at that time you didn't want him working as a fireman again?
"A. I don't remember saying any such thing as that to Mr. Toone.

"Q. Will you say you did not say that? You wouldn't make a threat to him like that without remembering it, would you?"

Mr. Pettus:
We object to that as argumentative.

Mr. Simpson:
And the answer "That would be a threat."

The Court:
I sustain the objection.

Mr. Pettus:
Now, we move to exclude Mr. Simpson's answer.

The Court:
That answer is excluded.

Mr. Simpson:
All right. "Yes, it would. Did you say that to Mr. Toone"?

Mr. Pettus:
We object to that.

Mr. Simpson:
This is a straight-out question as to whether he said that to Mr. Toone.

Mr. Pettus:
We object to the "Yes, it would."

The Court:
I overrule the objection.

Mr. Pettus:
We except.

Mr. Simpson:
All right.

"A. I don't remember saying any such thing to Mr. Toone.

"Q. You won't say you didn't say it?

"A. I don't remember saying such a thing. That would be silly, threatening him with a gun.

"Q. I am not asking you whether you are being silly or not being silly, but did you say to Mr. Toone 'I don't want to hear about you working as a fireman this time'?

"A. I don't remember saying anything like that to Mr. Toone, and I think if I had said it I would remember it.

"Q. You know you would remember threatening a man with a gun who was a good friend of yours, don't you? That would be an unusual thing?"

Mr. Pettus:
We object to that.

Mr. Simpson:
"A. Yes, sir."

The Court:
Overruled.

Mr. Pettus:
Let us get our objection in, Mr. Simpson.

The Court:
That is an argument.

Mr. Pettus:
That is an argument.

The Court:
I sustain the objection.

Mr. Pettus:
I ask that it go out.

The Court:
It is excluded, gentleman.

Mr. Simpson:
Then skipping the next, which is probably also an argument:

"Q. Then will you tell us you did or didn't?
"A. I don't remember saying anything like that to Mr. Toone.
"Q. You refuse to say you didn' tdo it?"

Mr. Pettus:
We object to that.

Mr. Simpson:

"Mr. Pettus:
"Wait a minute."

The Court:
I sustain the objection.

Mr. Simpson:
"I didn't say that."

Mr. Pettus:
We move to exclude Mr. Simpson's answer after the Court sustained the objection.

The Court:
That is excluded, gentlemen.

Mr. Simpson:
You don't exclude this question, "You refuse to say you didn't do it? Then will you tell us you did or didn't?", and the answer "I don't remember saying anything like that to Mr. Toone",—is that in, may it please Your Honor?

The Court:
That is excluded.

Q. What has helped to make your memory better today?

Mr. Pettus:
We object to that.

Q. Has anything happened to make you clear and certain as you are testifying here before this jury that you did not tell Mr. Toone that, when you were not sure, and just couldn't remember in November, 1955?

Mr. Pettus:
We object to that as an argument.

The Court:
As to whether anything has happened?

Mr. Simpson:
Yes, sir.

The Court:
I overrule the objection.

Mr. Pettus:
We object to the statement and the question, which is just contrary to what has been read. He said the same thing here and there.

The Court:
Overruled.

Mr. Simpson:
He said he didn't remember then.

Mr. Pettus:
We except.

Q. What has happened to make you positive today that you didn't say that to Mr. Toone, and yet in November about five weeks after this thing happened you couldn't remember whether you did or not?

Mr. Pettus:
We object to that as an argument.

The Court:
I sustain the objection as to that.

Q. Has anything happened to make you positive of it now?

A. I said back further in that statement if I had said anything like that, you remember it, that I said that if I had said things like that, I think I would remember it. I did not remember saying anything like that at any time, and I did not say anything like that.

Q. You say now that you did not say it?

A. I did not say anything like that.

Q. All right. Now, while you were in the freight office there did Mr. Petty and Mr. Smith, the Cashier, ask you for time to put up the money and freight bills that they had out there on their desk?

A. No, sir. I do not know Mister—I did not know Mr. Smith until he testified.

Q. Did any two men linger in the office after you went in the freight office and said whatever you did say?

A. If they did, I didn't see them.

Q. And then ask you if they might, before they had to go out, put up ten thousand dollars worth of freight bills and money that was lying out there, and in their drawer there on the desk, lock it up in the safe?

A. I didn't see any money in there.

Q. I am not asking you whether you saw the money. Did any two men, whether Mr. Petty and Mr. Smith or not, did any two men ask you to let them put up the money and freight bills they had out there on the desk?

A. They didn't ask me.

Q. Did they ask Mr. Bentley or Mr. Barnett in your presence?

A. If they did, I didn't see them.

Q. Were Mr. Bentley and Mr. Barnett with you at that time?

A. Yes, sir.

Q. When you were in the freight office?

A. Yes, sir.

Q. They were there present?

A. Yes, sir.

Q. They stayed with you during all this time, didn't they?

A. Pretty close together, yes, sir.

Q. You all stayed right together, didn't you?

A. Pretty close.

Q. When you went through the Yard Office you all were right together, weren't you?

A. I don't think so.

Q. When you went to the Yard Office, everybody was there working, there, weren't they?

A. Yes, sir.

Q. When you left there wasn't anybody working, was there?

A. I don't know.

Q. Didn't you say you just showed them a paper, and they all said "That's enough for me"?

A. I don't know whether they all came out, I don't know whether they did or not.

Q. You didn't see anybody working there when you left there, did you?

A. Not that I remember, I don't.

Q. When you got to the freight office they were all working there, weren't they?

A. Yes, sir.

Q. And when you left they all left, and the office was locked up, as the last man came out, wasn't it?

A. No, sir, they didn't any of them leave that I remember when we left.

Q. You left everybody at work?

A. No, they wasn't working, they were standing on the platform.

Q. On the platform outside the office?

A. They was under shelter.

Q. I say they were outside of the office though, outside of the enclosure?

A. Yes, sir, some of them were. I don't know if they all were or not.

Q. The place where they were working was inside of this room there in the enclosure in the freight office, wasn't it?

A. Some of them were working inside of what you call the office, some of them outside shelter, that would be—

Q. And the Cashier's desk was the first thing you came to when you walked in that office, wasn't it?

A. I don't remember anything about the Cashier's desk.

Q. What was there, a counter, right in front of you?

A. There was several desks in there.

Q. I say there was a counter there right as you walked in the front door, wasn't there, Mr. Pennington?

A. Something like this right here (indicating).

Q. The counter wasn't quite that high, was it?

A. I don't know.

Q. You don't know?

A. No, sir.

Q. All right. Now, there was an old man sitting behind that counter, wasn't there, when you walked in?

A. There was several pretty old people in there.

Q. You saw him testify here Monday afternoon, Mr. Smith, didn't you?

A. No, sir, I never remembered seeing him before in my life.

Q. I say you saw him here Monday, didn't you?

A. Yes, sir.

Q. The old man that said he had 43 years time in with the L&N Railroad?

A. Yes, sir, I saw him.

Q. And we put him on out of order so he could get back and let Mr. Long and Mr. Petty come down the next day. You remember last Monday, don't you?

A. Yes, sir.

Q. We put him on out of order. Did you see that old gentleman there that afternoon when you walked in?

A. I don't remember seeing him. It could be that I have seen him, but I just didn't recognize him.

Q. Well now, whether it was Mr. Smith or wasn't Mr. Smith sitting behind that Cashier's desk, I will ask you if you told him the third time to come on out, and come on out now?

A. No, sir, I did not.

Q. And if he didn't, after he locked up his money, come on out?

A. No, sir, didn't.

Q. And did you ask that old man as he walked on away from there after he had come out if he was going to come back there the next day to work?

A. I didn't ask anybody if they were coming back.

Q. Did he tell you "I don't know, I'll have to wait and see", did he tell you that?

A. No, sir.

Q. Did you say to him "If you do, I'll whip you all over this place"?

A. No, sir.

Q. You didn't tell him you would do that?

A. No, sir.

Q. You are positive of that?

A. Yes, sir.

Mr. Simpson:

You come on down, please, sir.

Mr. Pettus:
Come down.

The Court:
You are excused.

(Witness excused.)

Mr. Pettus:
Call Mr. Parker, H. K. Parker.

H. K. PARKER, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:

Q. Will you please state your name?
A. H. K. Parker.
Q. What do you do, Mr. Parker?
A. Locomotive Fireman
Q. Are you a member, or were you in October, 1955 a member of any of the Railroad Brotherhoods?
A. The Brotherhood of Locomotive Firemen.
Q. Locomotive Firemen?
A. Yes, sir.
Q. Do you recall this meeting that there has been testimony about on Sunday at your house, October 23?
A. Yes, sir.
Q. Where was that meeting held in your house?
A. In my basement.
Q. In your basement?

A. Yes, sir.

Q. Do you recall about the time the meeting occurred?

A. Between 4:00 o'clock—right around 4:00 o'clock.

Q. Right around 4:00 o'clock?

A. Yes, sir.

Q. Can you name some of the people that were at the meeting?

A. Yes, sir.

Q. All right.

A. Myself, J. M. Brown, Jr., T. A Kennedy, Vann, Logan, Reese Thomas, Howard Southerland, Fred Edwards.

The Court:

Who is that?

The Witness:

Fred Edwards, a conductor on the northern end. I think H. M. Baum was there, I am not positive, but I think he was; McCutcheon, Letchman, Howard Southerland. I am not positive, but I think Howard Anderson was there.

Q. Were there any men there other than firemen?

A. There was some engineers there.

Q. There were some engineers there?

A. Yes, sir.

Q. I believe you said that—was it Fred Edwards that was a conductor?

A. Fred Edwards is a conductor, and there is another man, Andrew Stuart, he is a pipe fitter.

Q. Pipe fitter?

A. Yes, sir.

Q. Well, it was an open meeting, wasn't it?

Mr. Simpson:
We object to leading. He asked him if it wasn't an open meeting, telling him, and then asking him if it wasn't.

The Court:
Sustained.

Q. I will ask you was it an open meeting?
A. No, sir, it wasn't no meeting.
Q. What was it?
A. It was just a get together.
Q. Just a get together?
A. Yes, sir, that's right.
Q. In other words, it was not a meeting, it was just some men getting together there?
A. Yes, sir.
Q. And there were several crafts represented?
A. Yes, sir.
Q. Is that right?
A. Yes, sir.

Mr. Simpson:
We object to his saying "Isn't that right", and leading him, telling him what to say.

The Court:
Sustained.

Q. Do you recall the subject of the discussion there, Mr. Parker?
A. The only discussion that I heard was making some kind of effort to get those jobs replaced, reestablished, the hostler helpers jobs.

Q. Had you known about the notice of the abolition of the hostler helpers jobs?

A. Yes, sir.

Q. What was said at that meeting, giving the name of the man saying it, and anything you recall being said?

A. Well, they was all talking about the same time. There was two or three little huddles in there, little groups in there, and they was all talking. About the only discussion I heard was making some kind of preparations to get the jobs back.

Q. Do you know what that preparation was?

A. No, sir.

Q. Do you remember Mr. Otts saying anything, and anything in particular that he said?

A. If he said anything about getting them back, I don't know it. I must have been on the other side of the room, talking to another bunch of fellows.

Mr. Simpson:

Now, we object to the voluntary statement that he must have been somewhere.

The Court:

Sustained. That is excluded, gentlemen.

Q. Well, you said there were little groups there in the room, talking?

A. That's right.

Q. How long did the meeting last?

A. About 30 or 40 minutes.

Q. About 30 or 40 minutes?

A. Yes, sir.

Q. Then did the men leave your house?

A. Yes, sir.

Q. Where did you go, if anywhere?
A. I went to Rex's Barbecue.
Q. About what time did you arrive there?
A. About five minutes after the meeting.
Q. Would that have been between 5:00 and 6:00?
A. That would have been between 4:30 and 5:00.
Q. Between 4:30 and 5:00?
A. Yes, sir.
Q. How long did you stay at Rex's?
A. Just a few minutes. I drank a Coca-Cola while I was there. I might have stayed 30 minutes.
Q. Then what did you do?
A. Went back home.
Q. Came back home?
A. Yes, sir.
Q. Did you stay at home all that evening?
A. Yes, sir.
Q. And what did you do on Monday following?
A. The first thing I done, I took my wife to work, and then I come back to Rex's Barbecue.
Q. How long did you stay there?
A. Oh, I was there several times during the day.
Q. You would come and go?
A. Yes, sir.
Q. To Rex's Barbecue?
A. Yes, sir.
Q. Do you remember any other places you visited on Monday?
A. No, sir.
Q. Were you at the Rex's Barbecue at nighttime on Monday?
A. Yes, sir.
Q. And what time did you get home Monday night, do you recall?
A. I met my wife and went home and ate supper.

Q. You went home and ate supper?

A. Yes, sir.

Q. Then did you go to Rex's Barbecue after supper Monday?

A. Yes, sir.

Q. Then you came home, did you?

Mr. Gibson:

We object to leading, if Your Honor, please. Let the witness do the testifying.

The Court:

I sustain the objection.

Q. Well, tell us where you went after you left Rex's Barbecue at night then?

A. Went home.

Q. You went home?

A. Yes, sir.

Q. The same place?

A. Yes, sir.

Q. Same home, wasn't it?

A. Yes, sir.

Q. And Tuesday, what did you do?

A. Took my wife to work, come back by Rex's Barbecue, went home and slept a while. That afternoon about 2:00 o'clock I went to Clay, Alabama fishing, and they wasn't biting, and I didn't stay up there but a couple of hours.

Q. And when you got back, where did you go when you got back?

A. I went home first, and stayed a while. Then I went back up to Rex's Barbecue.

Q. Where did you go after you left Rex's Barbecue that time?

A. I met my wife, I went after my wife.

Q. Then what did you do later, if anything, that day?

A. We ate supper. sat around the house until about 9:00 o'clock.

Q. Then what did you do?

A. Went back to Rex's Barbecue.

Q. How late did you stay there that night? That is Tuesday night?

A. Yes, sir.

Q. How late did you stay there then?

A. About midnight.

Q. Then where did you go?

A. Went back home.

Q. Wednesday, what did you do?

A. The same thing, carried my wife to work, went back to Rex's Barbecue.

Q. During this time from Sunday—what time did you go back to work, Mr. Parker, do you recall?

A. I believe it was Thursday night.

Q. Thursday night?

A. I am not positive, but I believe I went back to work Thursday night.

Q. Now, from the time, from Sunday night on until you went back to work, did you use any threats of force or violence, or attempt to intimidate any employee of the L&N?

A. No, sir.

Q. You did not?

A. No, sir.

Q. What were you earning at that time, Mr. Parker?

A. Sir?

Q. What were you being paid by the L&N at that time?

A. I wasn't being paid nothing.

Q. You didn't get anything while the work stoppage was on?

A. No, sir.

Q. But what were your earnings when you were working then?

A. $15.87.

Q. $15.87 a day, is that right?

A. Yes, sir.

Mr. Pettus:

That's all.

Cross Examination.

By Mr. Simpson:

Q. Did you put in a claim against the L&N Railroad?

A. Sir?

Q. Have you put in a claim against the L& NRailroad for $15.87 a day for the time you were out there, while this work stoppage or strike was in progress?

A. If I have, I never received no money from it.

Q. I say have you put in a claim?

A. I don't think so.

Q. Your attorney was asking you about i?

A. No, sir.

Q. You don't understand that the L&N owes you that money, do you?

A. I don't know about that. I never got any from them.

Q. All right, sir. Now on Friday night before this walkout on Sunday—I will be very brief, Your Honor—on Friday night before this walkout or strike or whatever it was on Sunday afternoon, you

attended the Union meeting over in Inglenook, didn't you?

A. Yes, sir.

Q. And you heard Mr. Grissom say there were about eight or nine or something like that there?

A. Yes, sir.

Q. And in that meeting the question of these hostler helpers jobs was not discussed as I understand it, except that somebody read a letter, Mr. Lloyd read a letter from Mr. Paschal about it?

A. That is, to the best of my memory, all that was said in the Union Hall there, just a letter read.

Q. Just a letter read?

A. The Recording Secretary read the letter.

Q. Now that Union, Brotherhood of Locomotive Firemen and Enginemen, that was the Union meeting you were attending?

A. Yes, sir.

Q. You had been Local Chairman or President of that Union yourself, hadn't you?

A. Yes, sir.

Q. And it was a strong, powerful Union?

A. Yes, sir.

Q. Had grievance machinery to take care of any wrongs that were done to its people, didn't it?

A. That's right.

Q. With the Railroad?

A. Yes, sir.

Q. It had a Local Chairman here, Mr. Otts?

A. Yes, sir.

Q. To represent the men on any grievance?

A. Yes, sir.

Q. And it had lawyers in Cleveland, and lawyers in Birmingham, and lawyers everywhere to take care of their men if anything was done wrong to them, didn't you?

A. Yes, sir.

Q. It had plenty of money to enforce their rights?

Mr. Pettus:

We object to that.

Mr. Simpson:

I think he knows. He has been an officer of it.

The Court:

Sustained.

Q. Anyway, that Union was the Union that had in its contract these hostler helpers, outside hostler helpers?

A. Yes, sir.

Q. It also had the inside hostler helpers too, didn't it?

A. Yes, sir.

Q. In its contract?

A. Yes, sir.

Q. There were three outside hostler helpers jobs, weren't there?

A. One on each shift, that's right.

Q. Three, one the first, one the second, and one the third shifts?

A. Yes, sir.

Q. Now, those outside hostler helpers were the men who brought the engines out of the Yard, outside of the Yard?

A. Yes, sir.

Q. That is they came along with the hostler who brought the engine out?

A. Yes, sir.

Q. And the inside hostler helpers were not involved in this matter, were they?

A. No, sir.

Q. They are the fellows that work on engines around in the Yard and sand them, and water them, and so forth?

A. Yes, sir.

Q. They were not involved in this, they were not cut off, it was the outside hostler helpers jobs that were involved?

A. Yes, sir.

Q. Now you say there was a letter read there from Mr. Paschal, your General Chairman, at that meeting?

A. That's right.

Q. And Mr. Paschal said that the matter would be taken up by him with the Railroad, that he thought it was in violation of their contract, cutting off these jobs, didn't he?

A. I don't remember the contents of the letter, but it was read in our meeting.

Q. And the letter said that he would take it up with the Railroad and follow the matter up, didn't it?

A. I don't remember what the letter said.

Q. And in the meeting there was nothing further said about this strike, or protest, or anything of the kind, but after the meeting was over a group of you agreed to meet down on the sidewalk outside, didn't you?

A. Yes, sir.

Q. So instead of having this discussion in the meeting of the Brotherhood, you had it out on the sidewalk after the meeting had adjourned, didn't you?

A. No, sir.

Q. Where did you have it?

A. That wasn't no meeting, the meeting was over.

Q. I say you waited until your meeting was over, and then had this discussion out on the sidewalk, didn't you?

A. It came up, yes, sir.

Q. It came up?

A. Yes, sir.

Q. Now then, who was in this group that met down there and discussed that matter?

A. Well, there was seven or eight of us, or six or seven of us. I don't remember just who left, but the remainder of us. I was asked about a place to have a meeting.

Q. To have a meeting?

A. That's the reason we was—

Q. I didn't ask you about that yet, I just asked you who was in this group that met in this meeting after the other meeting adjourned, down on the sidewalk, who was there?

A. I think it was myself and Grissom and McCutcheon, Jim Brown, J. B. Otts, and one or two more, I don't remember who.

Q. That's all you can remember?

A. Yes, sir.

Q. And it was practically the same men that had been upstairs there?

A. All except about two or three that left, yes, sir.

Q. All except about two or three that left?

A. All except two or three, yes, sir.

Q. In this meeting down on the sidewalk you all agreed to have a meeting Sunday afternoon, that would be the second day, at 4:30 in the afternoon at your house?

A. Yes, sir.

Q. And you did have that meeting?

A. Yes, sir.

Q. Now, at that meeting at your house on Sunday afternoon was there anybody there who was not a fireman, and if so tell us who it was?

A. Yes, sir, there was either a pipe fitter or machinist, I don't know which, with the L&N, Andy Stuart.

Q. Mr. Stuart?

A. Then there was a conductor on the north end, Fred Edwards.

Q. Fred Edwards, he had been a fireman, hadn't he?

A. No, sir.

Q. He had not?

A. No, sir.

Q. Mr. Fred Edwards was there?

A. Yes, sir.

Q. He is the man that testified here the other day, isn't he?

A. Yes, sir.

Q. Edwards and Stuart were there?

A. Yes, sir.

Q. Now, was there anybody else there that was not a fireman?

A. That's all, the best I remember that's the only ones that was there that didn't belong to either the engineers or firemen.

Q. Well, if there was anybody there who was an engineer, he had been a fireman?

A. Or still is a fireman.

Q. And was still a fireman if he was not running an engine?

A. Yes, sir.

Q. And a member of the Brotherhood of Locomotive Firemen and Enginemen?

A. Yes, sir.

Q. Now, Mr. Pettus asked you if this meeting didn't have other crafts in it?

A. Yes, sir.

Q. If there were any other crafts there, that was Mr. Edwards and Mr. Stuart, wasn't it, these two men?

A. Yes, sir.

Q. You don't know how they happened to come, do you?

A. No, sir.

Q. You didn't bring either one of them, did you?

A. No, sir.

Q. There were 20 men at that meeting, including those two, weren't there?

A. 20 or 21 or 22, something like that; in that neighborhood, yes, sir.

Q. So there were at least 18 at the meeting there that were firemen?

A. 17 or 18 yes, sir.

Q. 17 or 18 that were firemen?

A. Yes, sir.

Q. Now, the matter that was considered there was, of course, the question of getting these three jobs restored?

A. Yes, sir.

Q. That's right, wasn't it?

A. Yes, sir.

Q. That was the only matter discussed, wasn't it?

A. Yes, sir.

Q. How to do that?

A. Yes, sir.

Q. And did you hear Mr. Kennedy make a statement there at that meeting?

A. Yes, sir.

Q. You heard Mr. Grissom here a while ago say that Mr. Kennedy didn't say anything. Mr. Grissom was mistaken about that, wasn't he?

A. Well, Mr. Kennedy was over there talking to Logan and Vann. He didn't make a statement to the whole crowd. They was off to themselves doing a little talking of their own.

Q. Mr. Kennedy didn't get up there and state that he had talked to Jake Paschal, the General Chairman, that afternoon? You heard it at least, didn't you?

A. If he made any statements to the whole crowd I didn't hear it.

Q. I am not asking you about anybody else but yourself. You heard him make that statement?

A. No, I didn't.

Q. You say you heard Mr. Kennedy say something. What did you hear him say?

A. I walked over there to where he and Vann and Logan was talking, and they was—

Q. Now my question is what did you hear Mr. Kennedy say?

A. Well, I'm fixing to tell you now.

Q. All right, sir, please do.

A. They was talking about taking it up through regular channels.

Q. Mr. Kennedy was saying "Let's take it up through regular channels"?

A. Just them three.

Q. Just those three talking together?

A. Yes, sir.

Q. They came together, didn't they?

A. Yes, sir.

Q. And they also left together?

A. Yes, sir.

Q. Now, don't you know Mr. Kennedy got up there and said to that meeting, and that you heard him say at the meeting that "I have talked to General Chairman Jake Paschal this afternoon, and Mr. Paschal says for us not to strike, that a strike on this matter would be an outlaw or wildcat strike, and for us not to do it"? You heard Mr. Kennedy say it?

A. He may have said it, but I didn't hear it. I must have been on the other side of the basement.

Q. You won't say he didn't say it?

A. No, sir, I won't say he didn't say it.

Q. Did you hear somebody then after the decision to make a strike out of it, did you hear anybody tell Mr. Kennedy—

Mr. Pettus:

We object to that assumption, after the decision.

Mr. Simpson:

All right, I withdraw that part of the question.

Q. Did you hear anybody say to Mr. Kennedy "Anybody who doesn't want to help do the picketing is not welcome to this meeting, and we want them to leave"?

A. No, sir, I didn't hear that.

Q. You didn't hear anybody say it?

A. No, sir.

Q. You did see Mr. Kennedy, Mr. Vann and Mr. Logan get up and leave, didn't you?

A. Yes, sir.

Q. Before the meeting adjourned?

A. Yes, sir.

Q. You don't know why they left in advance of the rest of you, do you?

A. No, I don't.

Q. So far as you know, nobody said anything to those three men that would invite them or suggest to them that they leave the meeting, did they?

A. I think I'm the only one that went over there and talked to them.

Q. I am asking you, well, did you say anything to them, that if they didn't want to help picket they ought to get on out of the meeting?

A. No, sir, I didn't.

Q. You didn't say that?

A. No, sir.

Q. So far as you know nobody said anything to them that suggested to them that they ought to leave the meeting?

A. That's right.

Q. All you know is that they got up and left?

A. That's right.

Q. Why, you don't know anything about it?

A. No, sir.

Q. You have told us, or told your counsel here where you went all the time during that evening and the next day and the next day. I will ask you whether or not about 9:00 o'clock that night or some time between 8:30 and 9:00 o'clock you saw Mr. Rich? You remember Mr. Irvin Rich that testified here the other day, don't you?

A. Yes, sir.

Q. The fireman?

A. Yes, sir.

Q. Rather large young man, blond, open-faced fellow?

A. I know him.

Q. You saw him Tuesday. You know him, don't you?

A. Yes, sir.

Q. I will ask you whether or not, you in company with Mr. Thomas, one of the Defendants here, Reese Thomas—you know Reese Thomas?

A. Yes, sir.

Q. And Mr. McCutcheon?

A. Yes, sir.

Q. Between the hours I have mentioned, 8:30 to 9:15, were in the Yard of the L&N Railroad on that Sunday night, October 23, and were going from the office down towards the roundhouse; from the Dispatcher's Office down to the roundhouse?

A. No, sir.

Q. Were you in that Yard that night?

A. No, sir.

Q. You heard Mr. Rich say that he saw you, didn't you?

A. I heard what he said, yes, sir, but it wasn't—

Q. It wasn't you?

A. No, it wasn't, I wasn't on the L&N property, I was across the street.

Q. You say you were over at Rex's?

A. Yes, sir.

Q. But I am asking you if you didn't go with McCutcheon and Thomas, Reese Thomas, on to the roundhouse, and then up through the Yard, and clear those people out of the Yard there that night?

A. No, sir.

Q. And that M. L. Hall, some went one way, and you three went some other way, that you went through that Yard hollering "Clean out the Yard", or "Get out of the Yard"?

A. I didn't see any of that.

Q. You didn't see any of them?

A. Not any of that, no, sir.

Q. You didn't see any of that?

A. No, sir.

Q. Did you see Mr. Irvin Rich there that night at all?

A. Yes, sir.

Q. Where did you see Rich?

A. In front of Rex's Barbecue.

Q. You didn't see him at all as he was coming out of the place over there in the Company's property, within the gates?

A. I didn't see him until he come in Rex's Barbecue.

Q. Did you go in the Company's property that night when you came down there?

A. No, sir.

Q. When you came back down there about what time was it?

A. Well, I stayed down there until about midnight.

Q. Well, when did you get there?

A. Sir?

Q. When did you get down there?

A. Down where?

Q. When did you get back after the meeting at your house, when did you go down to Rex's?

A. After the meeting at my house?

Q. Yes, sir.

A. I went straight to Rex's Barbecue.

Q. You went there and stayed until about midnight?

A. But I made a trip home in between times.

Q. How long were you gone home?

A. I was there long enough to eat supper.

Q. Were you there, around there, from 8:30 until 9:30?

A. Yes, sir.

Q. You were down at Rex's?

A. Rex's.

Q. You were there from 8:30 to 9:30?

A. Yes, sir.

Q. I will ask you whether or not when you came back after the meeting at your place, at any time between midnight that night, you went into the Company's property?

A. No, sir.

Q. You did not, you stayed on the Rex's Barbecue side of the Pinson Pike?

A. Yes, sir.

Q. But you do remember seeing Mr. Rich there that night?

A. Yes, sir.

Q. Now, did you know why the L&N Railroad was shutdown for those three days?

A. It was on account of labor trouble.

Q. Well, did you know what the labor trouble was about?

A. It was on—all I know about it is on account of those hostler helpers jobs being abolished.

Q. It wasn't any surprise to you that it was shutdown, was it?

A. Well now it was in a way, yes, sir. I thought it would be taken up through channels.

Q. You thought it would be taken up through channels?

A. Yes, sir, I did.

Q. Did you advocate taking it up through channels?

A. I didn't make any suggestion, I just give them a place to meet, that's all.

Q. You just furnished them a place to meet?

A. Yes, sir.

Q. You didn't vote one way or the other on this thing?

A. No, sir.

The Court:

Did they take a vote down there at your house that Sunday afternoon, Mr. Parker?

The Witness:

No, sir.

Q. You have heard Mr. Kennedy and these other gentlemen say that the vote was taken, didn't you?

A. Yes, sir.

Q. They are mistaken about that, are they?

A. Yes, sir.

Q. That did not happen?

A. There wasn't no vote taken.

Q. There wasn't any vote taken?

A. No, sir.

Q. No show of hands?

A. No show of hands.

Q. Did you see Mr. Brown and Mr. Anderson getting a list of pickets there at your house that afternoon?

A. No, sir.

Q. Did you see them ask for the people who wanted to volunteer for picket duty to hold up their hands?

A. No, sir.

Q. Did you see those two men make a list of the men that volunteered for picket duty?

A. No, sir.

Mr. Simpson:

That's all. Come down.

Mr. Pettus:

That's all.

The Court:

You are excused.

(Witness excused.)

Mr. Pettus:

Mr. Weldon.

J. M. WELDON, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Pettus:

Q. Will you state your name?

A. J. M. Weldon.

Q. Where do you live, Mr. Weldon?

A. 3844 36th Avenue North.

Q. Are you one of the Defendants in this case?

A. Yes, sir.

Q. Are you a member of one of the Railroad Brotherhoods?

A. Yes, sir.

Q. Which one are you a member of?

A. Brotherhood of Locomotive Firemen and Enginemen.

Q. What is your job on the Railroad?

A. Locomotive Fireman.

Q. And what is your pay as a fireman, per day?

A. Well, we get paid different rates, on weight of drivers.

Q. What is the average per day?

A. On a switch engine it is $15.87.

Q. $15.87?

A. Yes.

Q. Did you attend this meeting at Mr. Parker's house?

A. Yes, sir.

Q. On Sunday afternoon?

A. Yes, sir.

Q. About what time did the meeting get underway?

A. I don't know. The meeting was underway when I got there. I didn't go—if there was a crowd gathered and went, I didn't see any of them. But I imagine it was around 4:15, 4:30. It was somewhere around 4:30 when I got there.

Q. Did you go to the meeting with anybody?

A. Yes, sir.

Q. Who did you go with?

A. Fred Edwards.

Q. How long did you stay at the meeting?

A. I imagine 15 to 20 minutes. maybe 30 or 40 minutes, I don't know.

Q. Did you leave at the same time Mr. Edwards left?

A. Yes, sir.

Q. What was the discussion at the meeting?

A. Well, it was pertaining to these hostler helpers.

Q. Did you take part in the discussion?

A. No, sir.

Q. Do you recall any of the statements that were made during the discussion; if so, who made them?

A. No, sir, they was milling around, talking, two or three different places, and I didn't hear anything that would register in my mind that I think would be important to remember.

Q. After the meeting where did you go?

A. I came back to Rex's Barbecue.

Q. Was Edwards with you then?

A. Yes, sir.

Q. About what time was it that you arrived at the Rex's?

A. I don't have no idea. It was before dark, between dark and sundown I would say. I don't have any idea what time it was.

Q. Did you stay at Rex's for some time, or did you leave?

A. I beg your pardon?

Q. Did you stay there for some time, or did you leave? How long did you stay there?

A. I don't remember whether—I went over to the roundhouse before I left the barbecue, parked my car at the barbecue and walked across over to the roundhouse. I don't remember whether I left then and went on home or not.

Q. About what time was it you went to the roundhouse?

A. Oh, I would say, it still wasn't dark, I believe it was beginning to get dusky dark when I went over there.

Q. Then after you went to the roundhouse did you go home, you say?

A. Yes, sir, the best I remember I went straight home, went on home.

Q. How long did you stay at home?

A. I don't know, maybe a couple or three hours.

Q. Did you go anywhere else later that evening?

A. Yes, sir.

Q. Where did you go?

A. I came back out to the barbecue.

Q. Do you know about what time you arrived the second time?

A. I would say it was around 8:00 or 9:00 o'clock, I don't know.

Q. 8:00 or 9:00 o'clock?

A. Yes, sir.

Q. How long did you stay there?

A. Well, off and on all night. I mean I would drive off and come back, wandering around.

Q. Did you go down to the Passenger Station any time that night?

A. Yes, sir, I went down there.

Q. Do you remember this colored man, Lee Thomas?

A. Yes, sir.

Q. Did you see him down there?

A. Yes, sir.

Q. Where did you see him?

A. Up at—under the passengers shed, up on the—at the Train Order Office.

Q. About what time of the night was that?

A. I imagine it was around 11:00 or 12:00 o'clock. I don't remember.

The Court:

Was that Sunday night or Monday night?

The Witness:

Sunday night.

Q. Was there anybody there at the same time that you saw Thomas?

A. Yes, sir, there was a gang of men standing around the Train Order Office there.

Q. Was there anybody at the engine when you saw him?

A. Yes, I think Mr. Ben Mitchell walked up to the engine and got on.

Q. Was Mr. Mitchell down at the station then?

A. Mr. Bailey was standing around there. I don't remember whether he got on the engine or not.

Q. Who was the engineer if you remember?

A. Mr. Hobart Parker.

Q. Did you have any conversation with Thomas then?

A. Not there, I don't think I did. I might have spoke to him, said something to him. I don't recall that I did.

Q. Now at that time or later did you take out a knife and display it to him?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Well, did you have any conversation with him at any time that evening?

A. Yes, sir.

Q. What was your conversation with him?

A. We got off the engine and I asked him, I said "Lee, have you got this brakes tied down and the main battery switches pulled on those engines?"

Q. What did he say to that?

A. He said "Yes, sir."

Q. Then did you have any further conversation with him?

A. Yes, sir.

Q. What was that?

A. Come on down, and he went to the telephone booth, and I told Hobart and them, I said "I've got a car, my car out here, I'll take you all home", or get somebody to take you home, my car was out at Rex's Barbecue at the time.

And I turned around, and he was in the telephone booth. I told him, I says "Lee, have you got a way home? If you haven't, I'll get you a way home now."

Q. Did he accept your offer?

A. He said "No, sir", said "Somebody would come after him."

Q. Did you take Mr. Parker home?

A. Yes, sir.

Q. Or arrange for him to be taken home?

A. Yes, sir.

Q. Where did you go after you left the Passenger Station?

A. Come on back out to Rex's Barbecue.

Q. How long did you stay there?

A. Well, off and on until about 5:30 or 6:00 in the morning, on Monday morning.

Q. And where did you go when you left at that time?

A. I went home.

Q. That was on Monday?

A. Yes, sir.

Q. Just state where you were the rest of Monday?

A. Home all day.

Q. Home all day?

A. Yes, sir. Well, maybe my wife and I taken a little ride somewhere, I don't remember where we went to. I don't think it was—I don't even know whether I even got in my car or not. I don't remember.

Q. How about Tuesday?

A. I stayed at home Tuesday—no, we went to the river Tuesday.

Q. Went to the river?

A. Yes, sir, we've got a cottage on the river, and we drove down there Tuesday.

Q. Wednesday, what did you do on Wednesday?

A. I believe I stayed at home.

Q. Did you do anything—of course, you didn't work at any time during this work stoppage, did you?

A. No, sir.

Q. Do you remember when you went back to work?

A. It was either on Wednesday or Thursday night.

Q. You haven't been paid for any of the time that you were not working during the work stoppage, have you?

A. No, sir.

Mr. Pettus:

That's all.

Cross Examination.

By Mr. Simpson:

Q. Mr. Weldon, when did you first hear about the meeting at Parker's house, Shorty Parker's house?

A. I come in off the run, off the road about, oh, some time early Sunday morning, I would say around 2:00 or 3:00 or 4:00 o'clock in the morning, and I heard something about it around the roundhouse, somebody mentioned it.

Q. Did they tell you the place and time?

A. Shorty Parker's, Sunday afternoon; no time; Shorty Parker's is all.

Q. I believe you say you went down to Rex's Barbecue that afternoon?

A. Sunday afternoon, yes, sir.

Q. About what time did you go down there?

A. Well, I don't know, around 4:00 or 3:30 or 4:30, somewhere in that neighborhood.

Q. Did you take anybody or go by yourself?

A. I went to Rex's Barbecue by myself.

Q. And when you got down there did you then go on over to the meeting at Shorty Parker's house?

A. I went in and drank a cup of coffee, and they told me, somebody in there told me, said—I believe it was Mr. Rollins.

Q. I am not asking you what Mr. Rollins said. I am asking you if you went from there over to Mr. Parker's house?

A. Yes, sir, I went from there over to Mr. Parker's house.

Q. Did you take anybody?

A. Yes, sir.

Q. Who did you take?

A. Fred Edwards.

Q. Fred Edwards?

A. Yes, sir.

Q. You could be mistaken about who you took, couldn't you?

A. No, sir, I don't think so.

Q. You know that it was Mr. Fred Edwards?

A. Yes, sir.

Q. How long had you known Fred Edwards?

A. Well, since I have been back out of the Army I have seen him, almost. I knew him but I didn't know his name up until this, about a year ago, well right after the work stoppage.

Q. Mr. Fred Edwards was a conductor on the north end, wasn't he?

A. Yes, sir.

Q. And you know that it was Fred Edwards that you took?

A. Yes, sir, I know it was him I taken, yes, sir.

Q. And did you invite him to go or did he know about it?

A. He said they was having a meeting up there and asked me could he go with me.

Q. He asked you could he go up to the meeting with you?

A. Yes, sir.

Q. And you took him?

A. Yes, sir.

Q. Now, when you got up there to Parker's house did you see any of these—you saw this group of people, about 20, that had assembled up there, did you?

A. Yes, sir.

Q. And you went in and were in the meeting?

A. Yes, sir.

Q. Were you feeling all right?

A. No, sir, I wasn't.

Q. You were sick too?

A. I wasn't sick, but I hadn't slept any too much Sunday, you know. I've got a teen-age boy at home, and you know how the telephone gets with teen-agers on Sunday. The telephone is in my bedroom, and I didn't get enough sleep.

Q. You didn't stay up all night Saturday night, did you?

A. Well, I worked Saturday.

Q. Got in about 2:00 o'clock?

A. About 2:00 or 3:00 or 4:00 o'clock, somewhere along there.

Q. You went to bed and slept until the teen-ager got up the next morning, didn't you?

A. Well, he was up around about 8:00 or 9:00 o'clock.

Q. You stayed up all night Sunday night, didn't you?

A. Yes, sir.

Q. You just told us that?

A. Yes, sir.

Q. You didn't feel so bad but what you stayed up all Sunday night, did you?

A. No, I felt bad, but I stayed up.

Q. You stayed up?

A. Yes, sir.

Q. As soon as you left that meeting over there at Shorty Parker's house you went over and checked out, called up and checked out as sick, didn't you?

A. No, sir, I didn't call up, I went over there.

Q. You went over and checked out on Jordan's book that has been introduced in evidence here, and told him you were sick, didn't you?

A. I told him I wasn't feeling too good, and I had my mileage about in, and I wanted off.

Q. You knew Mr. Weldon that there was going to be a strike that night at 9:00 o'clock, and you didn't want to be mixed up in it, that's the reason you checked out, wasn't it?

A. No, sir, I wouldn't say I did.

Q. You wouldn't say you did?

A. If there was a strike I wouldn't work anyway.

Q. You say that wasn't your reason, that you checked out as sick there that night?

A. No, I just didn't feel good, and I had my mileage in, and that was the reason that I checked out.

Q. You hadn't intended checking out until you left that meeting?

A. Yes, sir, I told my wife when I left home to go to that meeting—

Q. You can't tell what you told your wife.

Mr. Pettus:

That is responsive to the question. Let him answer the question.

Mr. Simpson:

I didn't ask him what he told his wife.

The Court:

I sustain the objection.

Q. Were there any of these other men that were at that meeting that went over there and checked out along with you at the time you checked out?

A. No, sir, I went alone.

Q. You went by yourself?

A. Yes, sir.

Q. Did you do any picket duty during that strike?

A. No, sir.

Q. You didn't see any picket duty being done, did you?

A. No, sir.

Q. None at all?

A. No, sir.

Q. Didn't go around where the entrances of this plant were?

A. I was around the Rex's Barbecue, in and out, around there, and all.

Q. You were around where those groups of men were standing around those entrances, weren't you? You were part of them?

A. Yes, first one and then another, yes, I was around the gate.

Q. You claim that wasn't picket duty?

A. There was nobody, I didn't see anybody hold any sign up, or tell nobody not to go in.

Q. Did I ask you if there was a sign held up?

A. No, sir, but I figured if you were asking about a picket—

Mr. Byrd:

We object to that as an argument.

A. —a man would have to have a sign.

Q. You say there is no picket duty unless a man has got a sign, is that your definition?

A. Well, I think so, yes, sir.

Q. So that men could be standing around there, asking people not to go in, and stopping the people from going in, but if he didn't have a sign he would not be doing picket duty, as you understand it, that's right, is it?

A. Well, so far as I know, yes, sir, so far as I would be concerned he wouldn't be.

Q. That wouldn't be picket duty?

A. No, sir.

Q. Why did you go down to the L&N station on that Sunday night?

A. I don't know, just merely riding around.

Q. Riding around?

A. Driving around, and drove down there.

Q. Did you get on that engine with Mr. Parker and this Negro Lee Thomas, that they brought in from Calera or Montgomery down to 18th Street?

A. Yes, sir.

Q. What were you doing down at 18th Street, mounting that engine? Did you have any duties on that engine?

A. No, sir.

Q. You had no duties on it. Who got on that engine with you?

A. I believe Mr. Ben Mitchell got on there with me.

Q. Who else got on there with you?

A. That's all I remember getting on there. I don't remember whether Mr. Bailey got on or not.

Q. Mr. Bailey?

A. Yes, sir.

Q. Did Mr. Bruce Barnett get on there with you?

A. No, sir.

Q. Did Bentley get on there with you?

A. No, sir.

Q. Who is Mr. Bailey?

A. That is the Engine Dispatcher.

Q. He is a Company man?

A. He was walking around there with me.

Q. But you mounted that engine down there at 18th Street right up in the Yard, up towards the station, didn't you?

A. That was in the station.

Q. At 18th Street?

A. At the Train Order Office. I rode to the other end and backed in the shed, backed in a track there, yes, sir.

Q. You can't tell us why you had gone down there to the L&N station that night except just to be riding around, is that right?

A. Yes, sir, I think—I went down there on that occasion, how come me down there, I went to ride in Charlie Schilleci's new Buick, and he happened to go down there, and I got out and he got ready to go, and I guess he just drove off.

Q. Didn't you tell us that you went down there that night to see Mr. Mitchell about putting in an application for an overseas job with the Republic Steel Company?

A. No, sir, I didn't say I went down there to see him. After I found out that he was up in the Passenger Station I went up to see him about it, yes, sir.

Q. You went up there to see Mr. Mitchell about getting a job with the Republic Steel overseas?

A. Yes, sir.

Q. Do you remember asking Mr. Edwards if he was a member of the Trainmen as you all left that meeting that night at Shorty Parker's house, that afternoon?

A. I don't know whether I did or not. It is possible that I did.

Q. You heard Mr. Edwards testify, you have been sitting in Court, hearing everybody testify, haven't you?

A. Yes, sir.

Q. You heard Mr. Edwards testify?

A. Yes, sir.

Q. I will ask you whether or not you asked Mr. Edwards as you were riding from Parker's house back to Rex's Barbecue if he was a member of the Trainmen and he told you he was?

A. I don't remember whether I asked him directly was he a member of the Trainmen or not.

Q. And did you then ask Mr. Edwards to call his Local Chairman and tell him you all were going to strike that night, either at 9:00 o'clock that night or 6:00 o'clock next morning, and tell the Trainmen that you all were going on strike?

A. No, sir, I don't think I told him that. I think I made the remark that the Local Chairman should be notified about it.

Q. About the strike?

A. Whatever it was going to happen, I didn't know what was going to happen.

Q. What did you tell him to notify the Local Chairman of the Trainmen about?

A. Well, he asked me, says "What would you do in my place?"

Q. About what?

A. I told him I would get hold of my Local Chairman and let him advise me what to do.

Q. About what?

A. If there was labor trouble.

Q. You knew then on the way back over there that there was going to be some labor trouble, didn't you?

A. I didn't know what it was going to be.

Q. You knew there was going to be a strike there at 9:00 o'clock that night, didn't you?

A. No, sir, I didn't know it.

Q. You told him to call his Chairman and tell him, and you went right on over and checked out, so

you wouldn't be mixed up in it? You checked out with the Engine Dispatcher, didn't you?

A. No, sir, I checked out—

Mr. Simpson:

Come down, Mr. Weldon, please, sir.

Mr. Pettus:

All right, you are excused.

(Witness excused.)

The Court:

Your next witness.

Mr. Taylor:

A. R. Thomas.

A. R. THOMAS, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Taylor:

Q. Is this Mr. A. R. Thomas?

A. Yes, sir.

Q. Generally referred to as Reese Thomas, is that correct?

A. That's right.

Q. What is your occupation with the L&N, Mr Thomas?

A. Fireman, Engineer, Hostler.

Q. What was your occupation on October 23, 1955?
A. I was a Hostler.
Q. Hostler?
A. Yes.
Q. Mr. Thomas, will you explain to the Court and jury the duties of a hostler on October 23, 1955?
A. Well, it is—

Mr. Simpson:
May it please the Court I object to it as being immaterial. I think we have been over that with a number of witnesses. It is repetitious.

The Court:
Overruled.

Mr. Simpson:
All right, sir.

The Court:
We can't keep going over this.

Mr. Taylor:
All right.

Q. Just briefly explain it.
A. Get engines out of the roundhouse or either off of the lead after they come in, and work them up preparatory to going out again, fuel them, see that they are fueled and supplied, couple or uncouple, in groups of from one to four, when there is four of them. There is 201 feet of it.
Q. All right, does the hostler's helper, or does the hostler ever take an engine across a railroad crossing?

A. Oh, every time you go to town you cross numerous railroad crossings.

Q. Just briefly if you will describe on October 23, 1955 the duties of a hostler's helper with respect to the safety of the engine?

Mr. Simpson:

We object to that as immaterial. We are not trying a question here of whether or not the Railroad Company was right or wrong about abolishing the outside hostler helpers jobs.

The Court:

I sustain the objection.

Q. I will ask you this question, prior to the abolishment of the hostler helpers jobs, when you crossed a railroad crossing was there a responsibility on the hostler helper to watch out for one side of the engine?

Mr. Simpson:

We object to that.

The Court:

I sustain the objection as repetitious.

Mr. Taylor:

All right, sir.

Q. Who was your hostler helper on Saturday, October 22?

A. C. L. McCutcheon.

Q. Did you learn that the Railroad proposed to abolish the craft of hostler helper?

A. I learned—

Mr. Simpson:

We object to that because it is not the hostler helper that is abolished, it was the outside hostler helper. They didn't abolish the hostler helpers.

The Court:

Do you have reference to the outside hostler helpers?

Mr. Taylor:

Outside hostler helpers, yes, sir.

The Court:

I overrule the objection.

Q. The Judge says you can answer.

A. It was the outside hostler helpers jobs that was abolished.

Q. Yes, sir. Did you receive any information that the Railroad proposed to abolish those jobs?

A. I learned about it when they put a bulletin up prior to that date, several days, that they intended to pull them off.

Q. All right, that was about the 19th of October, is that correct?

A. Something like that.

Q. Was that bulletin posted in a public place there in the L&N premises?

A. It was posted on the regular bulletin board that everybody is supposed to read every day.

Q. And it remained up there from the date it was posted, is that correct?

A. Yes, sir.

Q. So far as you know?

A. So far as I know it was.

Q. Did you hear any discussion about the intention of the Railroad to abolish those jobs after that was posted?

A. Well, it was discussed freely by everybody going in and out of the washroom that happened to see it.

Q. And was that washroom used by all crafts of the employees out there?

A. It is used by all the switch engine crews, mostly by them, 90 per cent of the switch engine crews, all of the pool men, and all of the freight men.

Q. And you say there was general discussion about the Railroad's intention, is that correct?

A. Well, to abolish a job that had been on 30 or 40 years, it created quite a bit of it.

Q. Now, did you work on Sunday preceding the work stoppage?

A. Sunday preceding that?

Q. Yes.

A. That would be a week prior to that?

Q. Well, I mean on Sunday, October 23, the day that work stoppage occurred that night?

A. I was supposed to go to work at 11:00 o'clock.

Q. That night?

A. That's right.

Q. The last time you worked with your shift was on Saturday night before that?

A. Yes, sir.

Q. Is that correct?

A. Saturday night, that's right.

Q. Now, Mr. Thomas, did you attend the Union meeting on Friday night which has been discussed?

A. I did not.

Q. You were not present?

A. I did not.

Q. Were you present when this group gathered on the sidewalk after the meeting was over?

A. No, sir, I wasn't even there.

Q. You were not there?

A. No, sir.

Q. Now, did you hear later about a gathering at Mr. Parker's home to be held on Sunday afternoon?

A. McCutcheon told me about it when I picked him up that night at his house going to work.

Q. Was that the first you had heard about the meeting?

A. That's the first I knew of the meeting.

The Court:
Was that on Saturday night?

The Witness:
No, Friday night, Judge.

The Court:
Friday night?

The Witness:
Friday night, yes, sir.

Q. Friday night is the first time you heard about it?

A. Yes, sir.

Q. Now, Mr. Thomas, as of Sunday, October 23, had those hostler helpers jobs been abolished at that time? Was it definite that they had been abolished?

Mr. Simpson:
We object to that. We have been over that many times here.

The Court:
Overruled.

A. Nobody could believe it would happen until it did happen.

Mr. Simpson:
We object to what they believed would happen.

The Court:
I sustain the objection.

Mr. Simpson:
I move to exclude it.

The Court:
That is excluded, gentlemen.

Q. Had it actually happened at that time, as of Sunday afternoon?

A. It happened at 3:00 o'clock Sunday afternoon.

Q. I will ask you did you attend the meeting at Mr. Parker's house?

A. I did.

Q. About what time did you go over there?

A. It was between 4:00 and 4:30.

Q. How did you get there, Mr. Thomas?

A. I went in my car.

Q. Did anybody go with you?

A. McCutcheon and Fleming.

Q. Were there any other people there when you arrived?

A. There was a group of men standing outside. 15 or 20 of them.

Q. The testimony has been offered several times about who was there. I will just ask you if the people who have been identified as being at that meeting were there according to your recollection?

A. You mean for me to identify the ones that were there, or just substantiate the ones they have already said were there?

Q. Was the testimony about the people being there substantially as you recall it?

A. Yes. There was another craft represented there though.

Q. Who was that?

A. That wasn't mentioned.

Q. Who was that?

A. The Brotherhood of Locomotive Engineers.

Q. You say that craft was represented?

A. There was a member of that organization there.

Q. Did anybody take charge of that group of people outside of the garage?

A. They was split up into several small groups, discussing different things I presume, as I was.

Q. Did you then move into the interior of the garage?

A. Along around 4:30 we went in.

Q. Was there anybody that you would say was in charge of that meeting?

A. There was no one specific.

Mr. Simpson:

We object to the conclusion whether anybody was in charge of it or not.

The Court:

Overruled.

A. There was no certain one in charge of it.

Q. Now, what was the subject matter that was discussed in your presence and hearing when you got inside of the meeting?

A. Well, we couldn't—I couldn't—I could only speak for myself. I couldn't believe that they would abolish the jobs—

Mr. Simpson:

We object and move to exclude it.

A. —until they did abolish them.

The Court:

Sustained. That is excluded, gentlemen. That answer is excluded.

Q. Just restrict it to what you said, Mr. Thomas, and not what you thought. If you said that, you may say it I presume the Judge means.

A. I said it was a shame that a man worked all his life to get a job like that, and then see it just, the whole craft abolished overnight.

Q. Was there any discussion there with reference to what you hostlers were going to do without the use of an outside hostler helper?

Mr. Gibson:

We object to leading him.

A. I didn't get the question.

Q. I asked was there anything said there about what the outside hostlers would do without the services of a hostler helper.

The Court:
I sustain the objection.

Mr. Taylor:
I am asking him if that statement wasn't made at the meeting.

Mr. Gibson:
Leading and suggestive.

The Court:
There is a question of the materiality of the statement.

Mr. Pettus:
Can't we bring out everything that occurred at the meeting? They have been permitted to go into everything that has been said, and we think we are entitled too.

The Court:
There are bound to have been some things that took place at the meeting that were not material, I assume.

Mr. Taylor:
The theory of it that I have is to show the reason for having the meeting, and that it was not any sinister plan to close up the Railroad, that it was a legitimate excuse, it is a part of the welfare of the job. I offer it on that basis.

Mr. Gibson:
We object to leading and suggesting. If they want to put it in, let the witness do it.

The Court:
I sustain the objection to the form of the question.

Q. You have stated, or testified here, you have stated about it being a shame. Did you make any other statement as to these jobs to the people that you talked to?

A. I went to the meeting primarily to find out what to do without a hostler helper.

Mr. Simpson:
We object.

The Court:
I sustain the objection.

Q. Don't state what the purpose was.

The Court:
I will exclude it.

Mr. Simpson:
I would like to say again that we are not trying the issue here of whether or not the L&N was right or wrong in taking off the outside hostler helpers. We don't understand that to be the issue here. The issue is whether or not they closed up the L&N Railroad over that; whether it was a good or bad issue, we object to trying that issue.

The Court:
I sustain the objection.

Q. Don't state what your intention was, Mr. Thomas. I just asked you if you can recall it, if you said anything along those lines.

A. You mean stated to the whole group?

Q. Did you make it to anybody there, not necessarily the whole group, if you made that statement to anybody there.

A. I said I would be glad to know what to do without a helper on an engine.

Q. Now, without repeating the testimony that has been offered about taking this matter up through channels, was there any firm conclusion reached at that meeting?

Mr. Simpson:

We object to "firm conclusion."

The Court:

I sustain the objection as to the form of the question.

Q. Did you agree with anybody to do any certain thing at that meeting?

A. I agreed with Otts that there was nothing that could be done except go out without a helper for the time being.

Q. And did you hear the statement made about taking the matter up through channels?

A. Mr. Otts said that he had a letter from Mr. Paschal informing us, which I didn't know anything about, that the only way that we—the only thing that we could do was to just let it go through proper channels, and he would handle it.

Q. Did you offer any disagreement with that statement that Mr. Otts made?

A. I had no reason to.